

PETITION FOR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property for Two (2) 12' x 25' illuminated sign structures.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser:
Foster & Kleiser
(Type or Print Name)
Signature: *[Signature]*
Address: 3001 Remington Avenue
City and State: Baltimore, Md. 21211
Phone No.: 235-8540

Legal Owner(s):
Anna E. E. Schneider
(Type or Print Name)
Signature: *[Signature]*
Address: 6430 Baltimore National Pike
City and State: Baltimore, Md. 21228
Phone No.: 212-28

Attorney for Petitioner:
Cooke, Esg.
(Type or Print Name)
Signature: *[Signature]*
Address: 36 South Charles Street - sixth floor
City and State: Baltimore, Maryland 21201
Phone No.: 332-8540

ORDERED By The Zoning Commissioner of Baltimore County, this 9th day of March, 1982, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 22nd day of April, 1982, at 9:30 o'clock A.M.

Z.C.O.-No. 1 (over)

PETITION FOR SPECIAL EXCEPTION

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Z.C.O.-No. 1 (over)

BALTIMORE COUNTY

ZONING PLANS

ADVISORY COMMITTEE



PETITION AND SITE PLAN

EVALUATION COMMENTS

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

April 14, 1982

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204

Chairman
Nicholas B. Commodari

MEMBERS
Bureau of Engineering
Department of Traffic Engineering
State Roads Commission
Bureau of Fire Prevention
Health Department
Public Planning
Building Department
Board of Education
Zoning Administration
Industrial Development

Ira C. Cooke, Esquire
M. Albert Figinski, Esquire
36 South Charles Street
Baltimore, Maryland 21201

RE: Item No. 93
Petitioner - Anna E. E. Schneider
Special Exception & Special Hearing Petitions

Gentlemen:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Located on the north side of Baltimore National Pike west of Rolling Road in the 1st Election District, the subject property is currently unimproved with the exception of two outdoor advertising signs. In view of your client's proposal to construct two additional signs on this property, the special exception is requested, while the special hearing is required in order to interpret Section 413.3f of the Baltimore County Zoning Regulations, concerning the required distance between signs on vacant property contiguous to improved commercial properties.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

Nicholas B. Commodari
Chairman
Zoning Plans Advisory Committee

ENCLOSURE
cc: Mr. Walker
Foster & Kleiser
3001 Remington Avenue
Baltimore, Md. 21211

BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS
TOWSON, MARYLAND 21204

HARRY J. PISTEL, P.E.
DIRECTOR

December 9, 1981

Mr. William E. Hammond
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Item #93 (1981-1982)
Property Owner: Anna E. E. Schneider
Location: 125' N/E of centerline of Baltimore National Pike
2020' W. of Rolling Road
Acres: 12 x 55 District: 1st

Dear Mr. Hammond:

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

General:

Baltimore County highway and utility improvements are not directly involved.

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings downstream of the property. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages to adjacent properties, especially by the concentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the Petitioner.

This office has no further comment in regard to the plan submitted for Zoning Advisory Committee review in connection with this item 93 (1981-1982).

Very truly yours,

Robert A. McKon, P.E., Chief
Bureau of Public Services

RAM:EAM:FWR:ss

H-NE Key Sheet
5 SW 28 Pos. Sheet
SW 2 G Topo
94 Tax Map

Maryland Department of Transportation

State Highway Administration

James I. O'Donnell
Secretary
M. S. Callender
Administrator

November 18, 1981

Mr. William Hammond
Zoning Commissioner
County Office Bldg.
Towson, Maryland 21204

Re: ZAC Meeting of Nov. 17, 1981
ITEM: #93
Property Owner: Anna E.E. Schneider
Location: 125' N/E of centerline of Baltimore Nat'l. Pike Route 40, 2020' W. of Rolling Road
Existing Zoning: B.R.
Proposed Zoning: Special Exception for two (2) 12 x 25 illuminated advertising structures.
Acres: 12 x 55
District: 1st

Attention: Mr. N. Commodari

Dear Mr. Hammond:

On review of the plan and field inspection showing the proposed sign outside the State Right of Way, the State Highway Administration finds the plan generally acceptable.

All additional information pertaining to the proposed sign location and construction should be through Mr. Morris Stein Chief State Highway Administration Outdoor Advertising (669-1642) Room #614, 707 N. Calvert Street, Baltimore, Md. 21203

Very truly yours,

Charles Lee, Chief
Bureau of Engineering
Access Permits

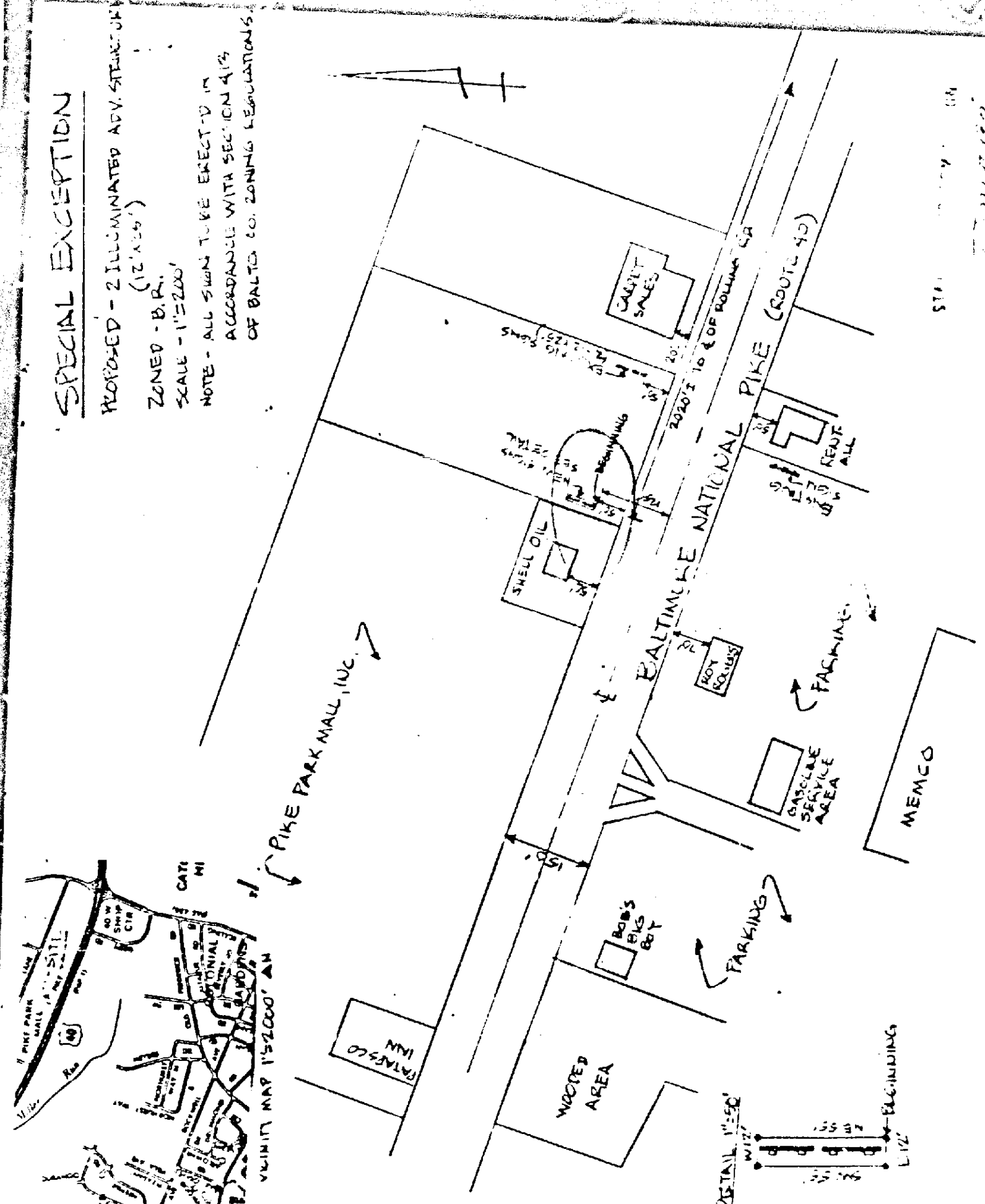
CL:GW:maw

By: George Wittman

cc: Mr. J. Wimbley
Mr. M. Stein

My telephone number is (301) 659-1350

P.O. Box 717 / 707 North Calvert St., Baltimore, Maryland 21203 - 0717



BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
TOWSON, MARYLAND 21204
494-3211

NORMAN E. GERGER
DIRECTOR

February 8, 1982

Mr. William Hammond, Zoning Commissioner
Zoning Advisory Committee
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

Dear Mr. Hammond:

Comments on Item #93, Zoning Advisory Committee Meeting, November 17, 1981, are as follows:

Property Owner: Anna E. Schneider
Location: 125' N/E of centerline of Baltimore National Pike 2020' W of Rolling Road
Acres: 12 X 55
District: 1st

This office has reviewed the subject petition and offers the following comments. These comments are not intended to indicate the appropriateness of the zoning in question, but are to assure that all parties are made aware of plans or problems with regard to development plans that may have a bearing on this petition.

This petition meets the requirements of the Division of Current Planning and Development.

Very truly yours,

John L. Wimbley
Planner III
Current Planning and Development

JLW:rh

disseminated a mimeographed version of Section 413 of the Baltimore County Zoning Regulations which purported to be in conformity with the regulations adopted on March 30, 1955. In 1957 the County published and disseminated a black looseleaf publication of the Baltimore County Zoning Regulations, known as the "Black Book." In 1963 the County republished this section in a blue looseleaf publication, the "Blue Book," with subsequent amendments through December, 1963. The versions of Section 413 in those three publications were consistent, and during the fourteen years following 1955 these three publications were treated as having the force of law, and were enforced by zoning authorities in Baltimore County.¹

Thereafter, in 1969, the County, without notice or hearing, published another looseleaf version of the Baltimore County Zoning Regulations, known as the "Red Book," which contained substantial changes from the version of Section 413 published in the previous three publications. In 1975, again without notice or hearing, the County published a gold looseleaf, the "Gold Book," in which the version of Section 413 differed not only from the consistent version of the mimeographed version, the Black Book, and the Blue Book, but also from the version found in the Red Book. The County attempted

¹ See EXHIBITS 1-4 which, in each case, permitted the construction of outdoor advertising signs, in B.R. zones, on vacant land contiguous to developed land, more than 100 feet apart but less than 500 feet apart.

to explain this inconsistency by claiming that the version of Section 413 in the Gold Book was consistent with that in the "Soft Cover Book," the purported original, which admittedly had been locked away in a vault away from the public view.

In 1981, Metromedia, Inc. brought an action in equity against Baltimore County in the Circuit Court of Baltimore County in which it asked for a declaratory judgment supporting its position that the consistent versions of Section 413 in the mimeographed version, the Black Book, and the Blue Book had become law by ratification, due to their publications, dissemination, and long acquiescence by Baltimore County. Furthermore, this version was not superceded by either the Red Book or the Gold Book versions, since both of these versions were published without notice or hearing.

Defendant, Baltimore County, in the Metromedia case, asserted that the Gold Book version of Section 413 of the Baltimore County Zoning Regulations was in full force and effect in the county because it was consistent with the language of Section 413 in the original document, the Soft Cover Book. On July 1, 1981, Judge Raine issued a Memorandum Opinion² in which he concluded that:

The consistent versions of Section 413 in the early mimeographed publication and in the Black Book and in the

² Copy attached as Petitioner's Memorandum Exhibit 5.

consistent with the original versions.

It is also undisputed that Judge Raine heard this exact situation in Metromedia, Inc. v. Baltimore County, Maryland, et. al., in which he concluded that the consistent versions of the mimeographed version, the Black Book, and the Blue Book, "became effective and controlling law by publication, dissemination, ratification and long acquiescence." He further held that this version of the law had not been validly changed by either the Red Book or the Gold Book "since the promulgation of these sets of regulations was not done after the notice and hearing required by Section 22 of the County Code." The Deputy Zoning Commissioner also acknowledged the correctness and validity of the decision reached by Judge Raine, when, in her Order denying the Petition for Special Exception on other grounds, she stated that after a review of the Baltimore County Zoning Regulations and the Metromedia Inc. v. Baltimore County case, "the requirements of Section 413.3.b., d., e. have been met" and "the requirements of Section 413.3.a., e., h., and i. have been met or are not applicable."

Nevertheless, counsel for Respondent in the instant case argues that the issue in this case is whether signs should be allowed at all, for according to the Gold Book they are not allowed in B.R. Zones. This argument is ill founded, as Judge Raine's decision clearly and unequivocally states that the publication, dissemination, and long acquiescence of the consistent

version of Section 413 in the mimeographed version, the Black Book, and the Blue Book constituted a ratification of that law. The subsequent publication of the Red Book and the Gold Book, done without notice or hearing required by Section 22 of the County Code, was contrary to law and therefore did not affect Section 413. The law as it now stands, which has been acted upon consistent with Judge Raine's opinion, is that outdoor advertising signs are allowed under section 413 as stated consistently by the mimeographed version, the Black Book, and the Blue Book.

By Baltimore County's own admission, the Soft Cover Book that it alleges is the original version was not disseminated to the public until 1975 when it was published in the Gold Book, almost twenty years after it was adopted. During the intermediate time, the Soft Cover Book was admittedly kept in locked places in Baltimore County away from the public view and never disseminated to the public.

A similar situation occurred in Pease v. Peck, 18 How. (59 U.S.) 595 (1855), in which the Supreme Court of the United States examined a statute of limitations of the State of Michigan. There, as here, the published version of the statute differed from the manuscript of enactment found among the public archives in Michigan. In Pease v. Peck the Supreme Court held that the territorial law which "had been received and acted upon for thirty years, in the words of the published

Blue Book became effective and controlling law by publication, dissemination, ratification, and long acquiescence. This version of the law was not validly changed by either the Red or the Gold Book since the promulgation of these sets of regulations was not done after the notice and hearing required by Section 22 of the County Code.

Metromedia, Inc. v. Baltimore County, Maryland, et al., Equity No. 103167, Memorandum Opinion at p. 2. Judge Raine instructed the Defendant Baltimore County that it "must accept application for special exceptions submitted by the Plaintiff and, after hearing, determine the merits of the application based upon Section 413 as contained in the mimeographed publication of 1955, and 1963." Ibid, at 2.

Petitioner in this case is the owner of property, zoned B.R., with a 275-foot frontage on Baltimore National Pike and a depth of 400 feet. This land is improved only with an existing double-face sign allowed by Case No. 69-218-X. Properties on both sides of the subject property are improved and currently occupied by Shell Oil Co. and Carpet Sales. The new outdoor advertising sign is proposed to be erected 50 feet from the property line, 150 feet from the center line of Baltimore National Pike, and 155 feet from the existing sign.

The Petitioner filed the necessary papers for a Petition for Special Exception, and on April 22, 1982, the matter was heard by Ms. Jean Jung, Deputy Zoning Commissioner of Baltimore County, in Special Hearing No. 82-226XSPH. On

statute," would control as against "a manuscript statute differing from the known public law," that was "disinterred from the slumber room of obsolete documents;..." 18 How. (59 U.S.) at 599.

The Supreme Court's opinion explained the reasoning for its holding in this case in a manner which applies equally well to the situation at hand. Mr. Justice Grier wrote:

"It is no doubt true, as a general rule, that the mistake of a transcriber or printer cannot change the law, and that when the statutes published by authority are found to differ from the original on file among the public archives, that the courts will receive the latter as containing the expressed will of the legislature in preference to the former. Yet, as the people who are governed by the laws, and the courts who administer them, practically know the law only from the authorized publication of them, the propriety of referring to ancient, altered, and erased manuscripts, for the purpose of changing their construction after a lapse of thirty years and after their construction has been long settled by the courts, and has entered as an element into the contracts and business of the citizens, may well be doubted. The reception and long acquiescence in them, as printed and distributed by authority, by those who had it always in their power to alter or annul them, and did not, may justly be treated as a ratification of them in that form by the sovereign people. The maxim 'communis error facit jus' though said to be dangerous in its application, because it sets up a misconception of the law, for destruction of the law, might here find a safe and proper

December 2, 1982, Ms. Jung issued an order denying the Petition for Special Exception on the grounds that Section 413.3.f. required that all signs on vacant land be located not less than 500 feet apart. The Deputy Zoning Commissioner did not deny the Petition because the Gold Book prohibited outdoor advertising signs on property zoned B.R., but rather, stated in her Order, that after reviewing both the Baltimore County Zoning Code and the Metromedia case, "the requirements of Section 413.3.b., d., e. have been met," and that "the requirements of Section 413.3.a., c., h., and i. have been met or are not applicable."

ARGUMENT

I.

The Petitioner first contends that a correct reading of the Baltimore County Zoning Regulations and the case of Metromedia, Inc. v. Baltimore County, Maryland, et. al., Equity Docket 142, Folio 255, Case No. 103167 (Raine, Chief Judge) finds that the consistent version of Section 413 found in the mimeographed version, the Black Book, and the Blue Book is the version that is properly in full force and effect in Baltimore County. The facts are undisputed that this was the only version of Section 413 disseminated from 1955 until 1969. Furthermore, it was not until 1975, almost twenty years later, that the Gold Book was published and disseminated, purportedly

application, and make it one of the "some cases" in which it is said the law so favors the public good, that it will permit a common error to pass for right." (Emphasis supplied) 18 How. (59 U.S.) at 596-7.

The acceptance of Judge Raine of the consistent version of the mimeographed version, the Black Book, and the Blue Book as a ratification of the government's long acquiescence to this as the law was therefore not a novel idea. Neither was its application to zoning ordinances, as other jurisdictions have concluded that long acquiescence in a statute as printed and published amounts to a ratification of the contemporaneous printed version or raises an estoppel against the denial of the validity of the contemporaneously printed version. Edel v. Filer Township, Manister County, 211 N.W.2d 547, 549 (Mich. App. 1973); City of Creston v. Center Milk Products Co., 51 N.W.2d 463, 465 (Iowa, 1952); Taylor v. Schlemmer, 183 S.W.2d 913, 916 (Mo. 1944). Each of these cases involved a printed, published, or long acted upon zoning ordinance which was challenged on technical grounds relating to enactment or publication. In each of these cases the challenge failed because of the length of time, more than ten years in each, that had elapsed between publication and challenge. These cases support Judge Raine's decision, for almost twenty years had elapsed between the distribution of the mimeographed version of Section 413 and the first publication of the Gold Book version.

Following the above cases, the consistent version of Section 413 had become law by ratification well before the publication of the Gold Book. Alternatively, the County and Respondent are estopped from denying that the consistent version of the mimeographed version, the Black Book, and the Blue Book is the governing law in Baltimore County.

Because this consistent version of Section 413 had become law, any change in the regulation must comply with the notice and hearing requirements of the Baltimore County Code. There must be substantial compliance with "legislative procedural and substantive prerequisites as to notice and hearings if the action of the zoning authorities is to be valid." Crozier v. Co. Comm. of Prince George's Co., 202 Md. 501, 506, 97 A.2d 296 (1953). Although the Gold Book version of Section 413 is consistent with the Soft Cover Book version, this version had been out of public view since 1955. The consistent version of the mimeographed version, the Black Book, and the Blue Book had become law by ratification, and therefore the Gold Book version did attempt to effect changes in the law. These changes must conform to the notice and hearing requirements of the Baltimore County Code. Since the Gold Book changes were not made in compliance with these requirements, they are invalid. Crozier v. Co. Comm. of Prince George's Co., supra.

- 10 -

II

Correctly, the only issue in this case should be the interpretation of the second sentence of Section 413.3.f. Whereas the first sentence of Section 413.3.f. states that "all outdoor signs on vacant land shall be located not less than 500 feet apart; all such signs placed on improved commercial properties shall be spaced not less than 100 feet apart" (Emphasis supplied), the second sentence continues, "The 100 foot spacing shall govern when improved and unimproved commercial properties are contiguous" (Emphasis supplied). The Petitioner contends that Section 413.3.f. clearly and unequivocally permits signs to be placed not less than 100 feet apart on unimproved commercial property, where such unimproved commercial property is contiguous with improved commercial property. The facts are undisputed that the sign Petitioner desires to construct is approximately 155 feet from the existing sign on the same property. The facts are also undisputed that Petitioner's property is unimproved commercial property which is bordered on one side by Shell Oil and on the other by Carpet Sales, both of which are improved commercial properties.

The Deputy Zoning Commissioner for Baltimore County takes the position that this section was included in Section 413.3.f. "to allow an outdoor advertising sign on vacant land to be located as close as 100 feet to another outdoor advertising sign when the latter sign is located on a contiguous improved commercial property." This is not evident from the statute. A reading of Section 413.3.f. discloses no requirement that the 100 foot rule be used only where the sign is to be placed on improved commercial property that is contiguous with unimproved commercial property on which there is a sign. No restriction is mentioned in Section 413.3.f. that this second sentence was not intended to apply to a situation such as that at hand, i.e., where the owner of unimproved commercial property that is contiguous with improved commercial property desires to apply the 100 foot rule to the erection of signs on his property.³ This interpretation of Section 413.3.f. does not attempt to strain its language -- indeed, the statute states clearly and unambiguously that "The 100 foot spacing shall govern when improved and unimproved commercial properties are contiguous." It is well settled in Maryland that where the language in a statute is clear and explicit, the court cannot disregard this meaning and insert exceptions where none exist. E.g. Barrett v. Clark, 189 Md. 1116, 123, 54 A.2d 128 (1947); Schmeizl v. Schmeizl, 186 Md. 371, 375, 46 A.2d 619 (1946); Bouse v. Hull, 168 Md. 1, 4, 174 A.645 (1935). Where the language in a statute is free and clear from doubt, as here, a court has no power to evade it by forced or unreasonable

- 11 -

sing sign when the latter sign is located on a contiguous improved commercial property." This is not evident from the statute. A reading of Section 413.3.f. discloses no requirement that the 100 foot rule be used only where the sign is to be placed on improved commercial property that is contiguous with unimproved commercial property on which there is a sign. No restriction is mentioned in Section 413.3.f. that this second sentence was not intended to apply to a situation such as that at hand, i.e., where the owner of unimproved commercial property that is contiguous with improved commercial property desires to apply the 100 foot rule to the erection of signs on his property.³ This interpretation of Section 413.3.f. does not attempt to strain its language -- indeed, the statute states clearly and unambiguously that "The 100 foot spacing shall govern when improved and unimproved commercial properties are contiguous." It is well settled in Maryland that where the language in a statute is clear and explicit, the court cannot disregard this meaning and insert exceptions where none exist. E.g. Barrett v. Clark, 189 Md. 1116, 123, 54 A.2d 128 (1947); Schmeizl v. Schmeizl, 186 Md. 371, 375, 46 A.2d 619 (1946); Bouse v. Hull, 168 Md. 1, 4, 174 A.645 (1935). Where the language in a statute is free and clear from doubt, as here, a court has no power to evade it by forced or unreasonable

³ See, again, footnote 1 and Exhibits 1-4.

- 12 -

construction in order to assert its own views. Smith v. Higinbotham, 187 Md. 155, 125, 48 A.2d 757 (1946); Leonard v. Wiseman, 31 Md 201, 205 (1869).

According to the Deputy Zoning Commissioner's interpretation of Section of 413.3.f., the sign could be erected only on improved commercial property that is contiguous with unimproved commercial property on which an existing sign is located. Therefore, under her interpretation the sign could be erected if it were moved ten feet over onto the property of Shell Oil Co., but not in its presently proposed site. Construction of the statute in this manner makes little if any sense for it would allow Shell Oil Co. to do exactly what Petitioner is prohibited from doing only ten feet away.

In construing the statute as she did, the Deputy Zoning Commissioner is doing so in a forced and unreasonable manner, for she is attempting to imply restrictions in Section 413.3.f. that are not present in the regulation. This is particularly true in light of the fact that past Zoning Commissioners of Baltimore County have granted Special Exceptions to permit structures to be erected on unimproved properties at a distance of less than 500 feet, consistent with 413.3.f. of the Baltimore County Zoning Regulations.

The consistent findings of prior Zoning Commissioners demonstrate that Petitioner's requested interpretation of Section 413.3.f. is a reasonable interpretation of the

- 13 -

statute. The interpretation urged by the Deputy Zoning Commissioner, conflicting with both the clear and explicit meaning of the statute and the meaning accepted by previous Zoning Commissioners, cannot be accepted.

CONCLUSION

The Petitioner therefore asks that this Board of Appeals, first, determine that Judge Raine's decision in Metromedia, Inc. v. Baltimore County, Maryland, et. al. in Equity, Docket 142, Folio 255, Case No. 103167 is valid and binding in the instant case. Second, Petitioner requests that this Board of Appeals find the Deputy Zoning Commissioner's interpretation of Section 413.3.f. unacceptable, and substitute instead the proposed interpretation, allowing the 100 foot rule to govern where unimproved and improved property is contiguous, irrespective of whether the proposed sign is to be erected on the unimproved or the improved property.

Respectfully submitted

Ira C. Cooke

- 14 -

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, That on this day of June, 1968, a copy of the foregoing Memorandum of Points and Authorities in Support of Petitioner's Appeal was mailed, postage prepaid, to John W. Hessian, III., Esquire, People's Counsel.

Ira C. Cooke

1767B

- 15 -

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

February 19, 1968

COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVE.
TOWSON, MD. 21204
VA. E-3000

GEORGE E. GAVRELS
DIRECTOR

JOHN G. POSE
ZONING COMMISSIONER

Donnelly Advertising Corporation of Maryland
3001 Remington Avenue
Baltimore, Maryland 21211

ATTENTION: Mr. Walker

RE: Petition for Special Exception
Beg. 5' from the center line of
Grays Road and Wise Avenue &
N/S Wise Avenue 935' E of
Grays Road - 15th Dist.
Edward C. Thompson, Pet.
NO. 68-189-X

Dear Mr. Walker:

I have this date passed my Order granting the above Special Exception for four 12' x 25' illuminated advertising structures, subject to approval of the site plan by the Bureau of Public Services and the Office of Planning and Zoning.

Very truly yours,
Edward D. Hardesty
EDWARD D. HARDESTY
Deputy Zoning Commissioner

EDH/jdr

EXHIBIT 1

882

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PERMITS AND LICENSES
County Office Building, Towson, Md.

SIGN PERMIT

Subdivision

Location: N/S Wise Avenue, 935' E of Grays Road, 15th Dist.

Projecting Sign

Complete Description, Dimensions, etc.

NO FURTHER ACTION

CHARLES A. HARDESTY, Director
Department of Permits and Licenses

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PERMITS AND LICENSES
County Office Building, Towson 4, Md.

SIGN PERMIT

This Sign Permit is hereby granted to:

Mr. Leon Goldberg,
Cockeysville, Md.

Location: 8301 N. Hillside Ave., 8th Dist., Donnelly Advertising Corp., Lessee

Re: Petition for a Special Exception for erection of 2 - 12' x 25' Advertising Structures - E. S. York Road 8301 N. Hillside Ave., 8th Dist., Donnelly Advertising Corp., Lessee

Very truly yours,
John G. Rose
Zoning Commissioner

cc: Donnelly Advertising Corp.,
3001 Remington Avenue,
Baltimore 11, Md.

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVE.
TOWSON 4, MARYLAND
VA. 21204

MALCOLM H. DILL
DIRECTOR
JOHN G. ROSE
ZONING COMMISSIONER

October 11, 1961

Mr. Leon Goldberg,
Cockeysville,
Maryland

Dear Mr. Goldberg:

I have today passed my Order granting the special exception in the above matter.

Very truly yours,

[Signature]
Zoning Commissioner

cc: Donnelly Advertising Corp.,
3001 Remington Avenue,
Baltimore 11, Md.

EXHIBIT 2

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PERMITS AND LICENSES
County Office Building, Towson 4, Md.

SIGN PERMIT

This Sign Permit is hereby granted to:

Mr. Allen M. Brooks,
Baltimore, Md.

Location: 4808 Liberty Heights Avenue, Baltimore, Maryland 21207

Re: Petition for Special Exception E/S of Reisterstown Road 105' SE of Westminster Road - 4th District Allen M. Brooks - Petitioner NO. 69-2-X

Very truly yours,
Edward D. Hardesty
Deputy Zoning Commissioner

Mr. Allen M. Brooks
4808 Liberty Heights Avenue
Baltimore, Maryland 21207

Re: Petition for Special Exception
E/S of Reisterstown Road 105' SE
of Westminster Road - 4th District
Allen M. Brooks - Petitioner
NO. 69-2-X

Dear Mr. Brooks:

I have this date passed my Order granting the above Special Exception for two (2) 12' by 25' illuminated advertising structures, subject to approval of the site plan by the State Roads Commission, the Bureau of Public Services and the Office of Planning and Zoning.

Very truly yours,

[Signature]
EDWARD D. HARDESTY
Deputy Zoning Commissioner

EDH/arl

Enclosure

cc: Donnelly Advertising Corporation of Maryland
ATTN: Mr. William B. Walker
3001 Remington Avenue
Baltimore, Maryland 21211

EXHIBIT 3

ALTERATION PERMIT

ALWAYS USE THE CONTROL AND THE PERMIT NUMBERS WHEN REQUESTING INSPECTIONS OR INFORMATION REGARDING THIS PERMIT. BUILDINGS ENGINEERS BUILDINGS INSPECTOR 823-3000 EX 358

BUILDING PERMIT

BALTIMORE COUNTY MARYLAND
OFFICE OF THE BUILDINGS ENGINEER
COUNTY OFFICE BUILDING
TOWSON, MARYLAND 21204

PERMIT NUMBER: 1054
CONTROL NUMBER: S1 007
DATE ISSUED: 8-7-68

DESCRIPTION OF WORK (SEE SPECIFIC)

ERECT TWO 12'x25' ADVERTISING STRUCTURES - SINGLE FACE

THIS PERMIT MUST BE POSTED
Be sure to read your Permit and call for inspections.
The first of these inspections must be called for as soon as the work is started.
The second inspection must be called for when the structural members are in place, but before covering same with lath or plaster.
The final inspection shall be called for before the structure is occupied.
LIMITATION This permit shall expire one-year from the date of issue unless otherwise provided.

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

(COPY)

February 24, 1958

William B. Davidson and
Hercules-Safe Deposit & Trust Co.,
13 South Street, Baltimore 2, Md.

Att. Mr. V. G. Mitchell,
Real Estate Officer

Re: Petition for Special Exception for erection of 3 Advertising Structures - S. S. Eastern Boulevard 125' E. Stearns Run Road - S. S. Eastern Boulevard 175' W. Severdy Court, 15th Dist., Donnelly Advertising Corp., Lessee

Dear Mr. Mitchell:

I have today passed my Order granting the special exception in the above matter.

Very truly yours,
[Signature]
Zoning Commissioner

cc: Donnelly Advertising Corp.,
3001 Remington Avenue,
Baltimore 10, Md.

EXHIBIT 4a

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PERMITS AND LICENSES
County Office Building, Towson 4, Md.

SIGN PERMIT

This Sign Permit is hereby granted to:

Mr. Leon A. Crane,
Baltimore, Md.

Location: 1800 N. Charles Street, Baltimore, Md. 21201

Re: Petition for Special Exception for 2 Illuminated Advertising Structures N/E Side Windsor Mill Road 400' from Rolling Road - 2nd Dist., Leon A. Crane and Jacob L. Friedman, Petitioners Donnelly Adv. Corp. of Md., Lessee

Very truly yours,
[Signature]
Zoning Commissioner

cc: Mr. W. B. Walker,
Donnelly Adv. Corp. of Md.,
3001 Remington Ave.,
Baltimore, Md. 21211

EXHIBIT 4b

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVE.
TOWSON, MD. 21204
VA. 21204

GEORGE E. GAVRELIS
DIRECTOR
JOHN G. ROSE
ZONING COMMISSIONER

September 20, 1967

Mr. Leon A. Crane,
1800 N. Charles Street
Baltimore, Md. 21201

Re: Petition for Special Exception for 2 Illuminated Advertising Structures N/E Side Windsor Mill Road 400' from Rolling Road - 2nd Dist., Leon A. Crane and Jacob L. Friedman, Petitioners Donnelly Adv. Corp. of Md., Lessee

Dear Mr. Crane:

I have today passed my Order granting the special exception in the above matter, subject to approval of the site plan by the Bureau of Public Services and Office of Planning and Zoning.

Very truly yours,

[Signature]
Zoning Commissioner

cc: Mr. W. B. Walker,
Donnelly Adv. Corp. of Md.,
3001 Remington Ave.,
Baltimore, Md. 21211

EXHIBIT 4b

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PERMITS AND LICENSES
 County Office Building, Towson, Md.

DATE: 1-13-83
 SUBDIVISION: 7

The Sign Permit is hereby granted to:

1000 E. Charles St.
 Baltimore, Md. 21201

Location: 1000 E. Charles St. 1000 E. Charles St. 1000 E. Charles St.

Project: Sign (Type Standing) - Front - 10' from side street

Complete Description: 10' from side street

CHARTERED BY THE BUILDING ENGINEER
 DEPARTMENT OF PERMITS AND LICENSES

1-13-83

This Permit shall be kept on the premises open to public inspection during the prosecution of the work and until completion of same. LIMITATION: If any building, sign or other structure is erected, altered, moved, removed or otherwise changed, the permit is not valid. If the permit is not used within six (6) months after the date of issuance, it shall be void. If the permit is not used within six (6) months after the date of issuance, it shall be void. If the permit is not used within six (6) months after the date of issuance, it shall be void.

(COPI)

15. B-1018

February 9, 1960

Mrs. B. Edna Fiel,
 7415 Windsor Mill Road,
 Baltimore 7, Md.

Re: Petition for Special Exception for
 1 Double-Faced Advertising Structure -
 N.E. Side Windsor Mill Road 110 ft.
 S. E. Rolling Road, 2nd District -
 Donnelly Advertising Corp., Lessee

Dear Mrs. Fiel:

I have today passed my Order granting the special exception in the above matter.

Very truly yours,
 [Signature]
 Deputy Zoning Commissioner

cc: Donnelly Advertising Corp.,
 3001 Remington Avenue,
 Baltimore 11, Md.

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PERMITS AND LICENSES
 County Office Building, Towson, Md.

DATE: 1-13-83
 SUBDIVISION: 7

The Sign Permit is hereby granted to:

1000 E. Charles St.
 Baltimore, Md. 21201

Location: 1000 E. Charles St. 1000 E. Charles St. 1000 E. Charles St.

Project: Sign (Type Standing) - Front - 10' from side street

Complete Description: 10' from side street

CHARTERED BY THE BUILDING ENGINEER
 DEPARTMENT OF PERMITS AND LICENSES

1-13-83

This Permit shall be kept on the premises open to public inspection during the prosecution of the work and until completion of same. LIMITATION: If any building, sign or other structure is erected, altered, moved, removed or otherwise changed, the permit is not valid. If the permit is not used within six (6) months after the date of issuance, it shall be void. If the permit is not used within six (6) months after the date of issuance, it shall be void. If the permit is not used within six (6) months after the date of issuance, it shall be void.

494-3180

County Board of Appeals
 Room 219, Court House
 Towson, Maryland 21204
 February 2, 1983

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #108

CASE NO. 82-226-XSPH ANNA E. E. SCHNEIDER

N/s of Baltimore National Pike, 2119' W of Rolling Rd.

1st District

SE-2 outdoor advertising illuminated sign structures

SPH-Spacing between signs

12/2/82 - D.Z.C.'s Order--DENIED

ASSIGNED FOR: THURSDAY, APRIL 21, 1983, at 10 a.m.

cc: M. Albert Figinski, Esq. Attorney for Petitioner

Anna E. Schneider Petitioner

Foster & Kleiser Contract Purchaser

J. W. Hession, Esq. People's Counsel

J. Dyer

W. Hammond

J. Jung

N. Gerber

J. Hoswell

June Holmen, Secy.

2/2/83 - Following were notified of hearing set for Thursday, April 21, 1983, at 10 a.m.:

M. A. Figinski, Esq.
 Anna Schneider
 Foster and Kleiser
 J. Hession
 J. Dyer
 W. Hammond
 J. Jung
 N. Gerber
 J. Hoswell

County Board of Appeals of Baltimore County
 Room 200 Court House
 Towson, Maryland 21204
 (301) 494-3180

May 17, 1983

Ira C. Cooke, Esquire
 6th Floor
 36 S. Charles Street
 Baltimore, Maryland 21201

Re: Case No. 82-226-XSPH
 Anna E. E. Schneider

Dear Mr. Cooke:

It is my understanding that the transcript of the above captioned proceeding was completed in the latter part of April.

The record reflects that you were to submit a Memorandum within ten days of receipt of said transcript.

Please arrange to obtain said transcript within ten days from the date of this letter. Within ten days thereafter we shall expect your Memorandum. Should we not receive said Memorandum, we shall assume you do not intend to submit same and shall make a determination as to the subject matter.

Sincerely,
 [Signature]
 William R. Evans, Acting Chairman

WRE:cc
 cc: People's Counsel

MELNICOVE, KAUFMAN, WEINER & SMOUSE, P.A.
 36 SOUTH CHARLES STREET
 SIXTH FLOOR
 BALTIMORE, MARYLAND 21201-3060
 (301) 332-8500
 WRITER'S DIRECT DIAL NO. 332-8520

January 30, 1982

William E. Hammond, Esquire
 Chief Zoning Commissioner
 County Office Building
 111 West Chesapeake Avenue
 Towson, Maryland 21204

RE: Item No. 22
 Petitioner-Anna Schneider
 Special Exception Petition

Dear Commissioner Hammond:

By letter dated January 7, 1982, copy enclosed, as Exhibit 1, Nicholas B. Commodari, Chairman, Zoning Plans Advisory Committee, Baltimore County notified my client, Foster & Kleiser, the interested party in regard to the above-referenced petition, that processing would cease because the property billboard "is located closer than 500 feet to the existing sign on this vacant property." Respectfully, on behalf of my client, I contend that Mr. Commodari improperly terminated the processing because Section 413.3 of the County's Zoning Ordinance, properly construed, allows an outdoor advertising sign, i.e., a billboard, as a Special Exception in the instance posited by the above-referenced application. Respectfully, I would request that either (a) the processing be continued and a regular hearing held before you or (b) a special hearing before you be scheduled to resolve the legal issue at the heart of this matter.

Section 413.3 f provides in pertinent part:

"In [certain zones including the zones in which this sign is proposed], all outdoor advertising signs on vacant land shall be located not less than 500 feet apart; all such signs placed on improved commercial properties shall be spaced not less than 100 feet apart."

MELNICOVE, KAUFMAN & WEINER P.A.

William E. Hammond, Esquire
 January 30, 1982
 Page Two

The 100 foot spacing shall govern when improved and unimproved commercial properties are contiguous. Two signs placed approximately at right angles to the street right-of-way...are permitted. Provisions as to spacing and location of signs shall apply separately to each side of a street." [Emphasis supplied.]

The reasoning stated by Mr. Commodari rests solely on the first part of the first sentence of the section. It, unfortunately, ignores the provision as a whole and, particularly, the second sentence, underlined in the foregoing quotation. The petition where there are contiguous improved and unimproved commercial properties. Sign site 1 is 110' west of the line binding, on the east, between improved and unimproved commercial properties; sign site 2 is 10' east of the line binding, on the west, between improved and unimproved commercial properties. What can the above underlined sentence mean unless it means that in a situation such as that posited by the above-referenced petition the one hundred foot gauge should be followed? There is no other proper construction of the section. Indeed, if Mr. Commodari's expression of January 7 is followed, the second sentence of the foregoing section would be administratively excised from the zoning code.

It should be noted that on at least two prior occasions the interpretation sought by my clients has been accepted by the County's zoning process. At any hearing, reference to the prior approvals will be presented.

On behalf of my clients, I respectfully ask for the relief requested at the close of the first sentence hereof.

Very truly yours,
 [Signature]
 M. ALBERT FIGINSKI

MAF:dja
 cc: Mr. W. R. Walker
 Foster and Kleiser

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

January 7, 1982

MEMORANDUM FOR THE CHAIRMAN

SUBJECT: ZONING PETITION

FROM: Mr. William R. Walker

TO: Mr. Nicholas B. Commodari

DATE: 1-11-82

RE: Item No. 23

Petitioner - Anna Schneider

Special Exception Petition

Mr. William R. Walker
Foster & Kleiser
3001 Hamington Avenue
Baltimore, Maryland 21211RE: Item No. 23
Petitioner - Anna Schneider
Special Exception Petition

Dear Mr. Walker:

As explained in our previous conversations, I am unable to continue processing the above-referenced petition until a variance request is included. This is based on the fact that the proposed sign is located closer than 500 feet to the existing sign on this vacant property.

If you have any further questions please do not hesitate to contact this office at 451-2331.

Very truly yours,

Nicholas B. Commodari
NICHOLAS B. COMMODARI
Chairman
Zoning Plans Advisory Committee

NEB:ec

EXHIBIT 1

Ira C. Cooke, Esq.
M. Albert Figinaki, Esq.
36 South Charles Street
Baltimore, Md. 21201

Mr. Walker
Foster & Kleiser
3001 Hamington Avenue
Baltimore, Md. 21211

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your Petition has been received and accepted for filing this 9th day of March, 1982.

William E. Hammond
WILLIAM E. HAMMOND
Zoning Commissioner

Petitioner Anna E. E. SchneiderPetitioner's Attorney Cooke/Figinaki, Esq.

Reviewed by: *Nicholas B. Commodari*
Nicholas B. Commodari
Chairman, Zoning Plans
Advisory Committee

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY

Towson, Maryland 82-226-XSPH

District 1st Date of Posting April 3, 1982
Posted for: Special Exception and Special Hearing
Petitioner: Anna E. E. Schneider
Location of property: N/S Baltimore National Pike 2114 W of Rolling Road
Location of Signs: 2 signs, 1 on N/S Baltimore National Pike approx. 2119' West of Rolling Road
Remarks: As shown on plat filed with the Zoning Department
Posted by: *William E. Hammond* Date of return: April 9, 1982
Number of Signs: 2

MEMORANDUM, INC. *
Plaintiff *
V *
BALTIMORE COUNTY, MARYLAND *
et al *
Defendants *

MEMORANDUM OPINION

In 1955 the County published a mimeographed version of Section 413 of the Baltimore County Zoning Regulations which purported to be in conformity with certain regulations adopted by the County Commissioners of Baltimore County on March 30, 1955. In 1957, and in 1963, the County republished this same version in the "Black" and "Blue" books respectively. For the next fourteen years the County treated these three published versions of Section 413 as the established rule, by adhering to the regulation, insisting that others follow its dictates, and representing to the Courts that this version of Section 413 was the law to be applied to all cases coming within its ambit.

In 1969, without notice or hearing, the County published yet another looseleaf volume of zoning regulations, the Red Book, which substantially altered Section 413 as it appeared in the previously promulgated versions. In 1975, the County published a gold looseleaf edition of the regulations (the Gold Book). In this edition, Section 413 followed the Red book but was inconsistent with the Black and Blue books. The County explains the inconsistency as follows: While searching County archives, some county employee found, secreted away in a vault, the original version (the "Soft Book") of the 1955 zoning regulations which differed substantially from the three versions which the County had disseminated. Thereupon the County promulgated a new version of Section 413 in the Red and Gold Books without notice or

PETITIONER'S
EXHIBIT 2

CERTIFICATE OF PUBLICATION

TOWSON, MD., April 1, 1982

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., on each of 999 times, before the 22nd day of April, 1982, the first publication appearing on the 1st day of April, 1982.

THE JEFFERSONIAN,

Manager.

Cost of Advertisement, \$ 24.50

hearing, picking up the original Soft Book text that differed significantly from the mimeographed and the Black and Blue versions.

The Plaintiff cried foul: The County is changing the rules in the middle of the game. The Plaintiff contends that the County, by repeated publication, abandoned any adherence to the Soft Book and that its long adherence to and dissemination of the old Section 413 constituted a de facto ratification of the mimeographed version of the 1955 zoning regulations. In support of this contention the Plaintiff cites Pease v Peck, 18 How. (59 US), 595 (1855) which holds that the government's long acquiescence to a law which it has promulgated constitutes a ratification of that law, even though the promulgated version differs from the original text.

The consistent versions of Section 413 in the early mimeographed publication and in the Black Book and the Blue Book became effective and controlling law by publication, dissemination, ratification and long acquiescence. This version of the law was not validly changed by either the Red or the Gold Book since the promulgation of these sets of regulations was not done after the notice and hearing required by Section 22 of the County Code.

This Court will declare that the Defendant must accept application for special exception submitted by the Plaintiff and, after hearing, determine the merits of the application based upon Section 413 as contained in the mimeographed publication of 1957 and 1963. This ruling is applicable only to Section 413 and to no other regulation.

John E. Raine, Jr.
JOHN E. RAINE, JR.
CHIEF JUDGE

JULY 1, 1981

-2-

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your Petition has been received this 4th day of Nov, 19 81
Filing Fee \$ 50 Received: Check
Cash
Other

William E. Hammond
William E. Hammond, Zoning Commissioner

1 by B. Walker
wed by WBE
of the Petition for assignment of a

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 106813

DATE 3/15/82 ACCOUNT 01-662RECEIVED FROM Foster & Kleiser AMOUNT \$50.00

FOR Filing Fee for Case #82-226-XSPH (Schneider)

VALIDATION OR SIGNATURE OF CASHIER

#82-226-XSPH

N/S of Baltimore National Pike,
2,119' W of Rolling Road

Anna E. Schneider
2 SIGNS

Black Book - 1957

SIGNS

- The total surface area of any such sign, exclusive of structural supports, and trim shall not exceed 300 square feet, except that a hand-painted custom-built sign may have a total surface area of not exceeding 500 square feet. The provisions of this sub-paragraph referring to hand-painted custom-built signs shall permit only one single face unit.
- No such sign shall be permitted to front on, face or be located within 250 feet of the right-of-way of any expressway or other controlled-access-type highway.
- No such sign shall be located closer to the street right-of-way line than the minimum front yard requirement for a commercial building as determined by these Regulations for the zone involved.
- No such sign shall be located on unimproved land within 100 feet of any street intersection involving a dual highway, or within 50 feet of any other intersection.
- No outdoor advertising sign shall be erected in any B. L., B. M., or B. R. Zones if at least 50% of the available frontage between streets, on that side of the street on which the sign is proposed to be located, is improved with dwelling uses.
- In any B. L., B. M., B. R. Zones, all outdoor advertising signs on vacant land shall be located not less than 200 feet apart; all such signs placed on improved commercial properties shall be spaced not less than 100 feet apart. The 100 foot spacing shall govern when improved and unimproved commercial properties are contiguous. Two signs placed approximately at right angles to the street right-of-way, either back to back or end to end, are permitted. Provisions as to spacing and location of signs shall apply separately to each side of a street.
- In any M. L. or M. H. Zone, signs shall be placed at least 1,000 feet apart on the

42

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY

Towson, Maryland

82-226-XSPH

District 1st Date of Posting 1-15-83
Posted for: Special
Petitioner: Anna E. Schneider
Location of property: N/S of Baltimore National Pike 2119' West of Rolling Road
Location of Signs: 1 sign, 2,200' West of Rolling Road, approx. 2119' West of Rolling Road on North side of Baltimore National Pike
Remarks: As shown on plat filed with the Zoning Department
Posted by: *William E. Hammond* Date of return: 1-21-83
Number of Signs: 2

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

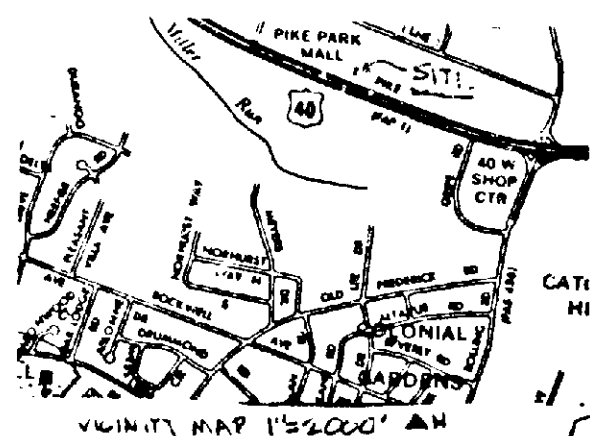
No. 113048

DATE 12/30/82 ACCOUNT R-01-615-002RECEIVED FROM Foster & Kleiser AMOUNT \$100.00

FOR Appeal on
ANNEXING EXEMPTING Case #82-226-XSPH
(Anna E. E. Schneider)

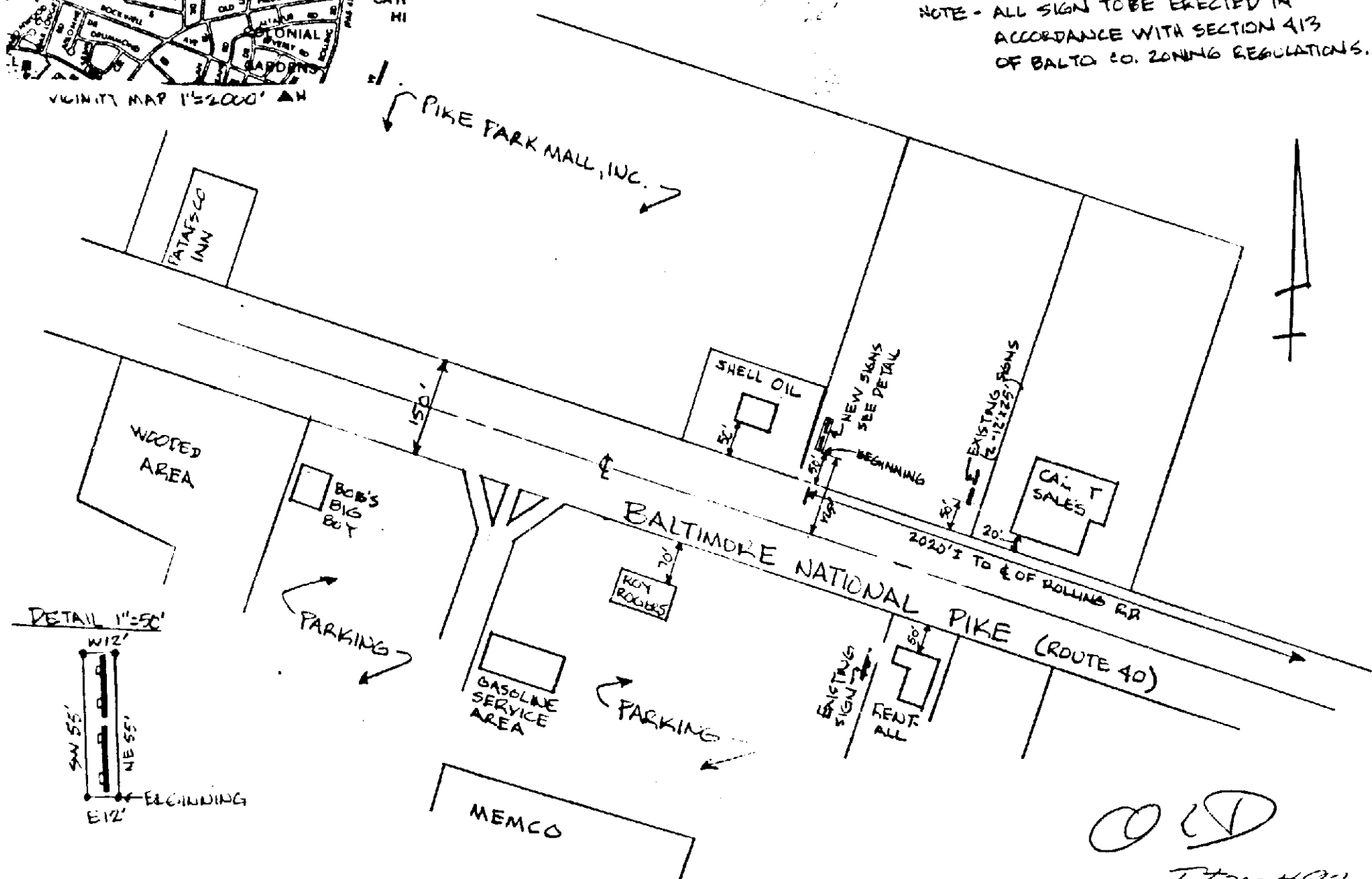
C 683*****1000010 4J7A

VALIDATION OR SIGNATURE OF CASHIER

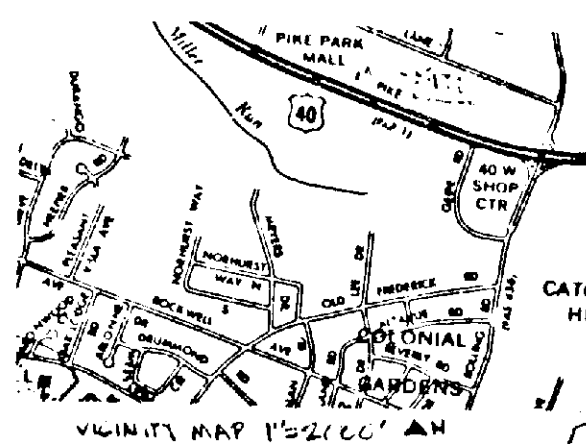


SPECIAL EXCEPTION

PROPOSED - 2 ILLUMINATED ADV. STRUCTURES
(12'x25')
ZONED - B.R.
SCALE - 1"=200'
NOTE - ALL SIGN TO BE ERECTED IN
ACCORDANCE WITH SECTION 413
OF BALTO CO. ZONING REGULATIONS.

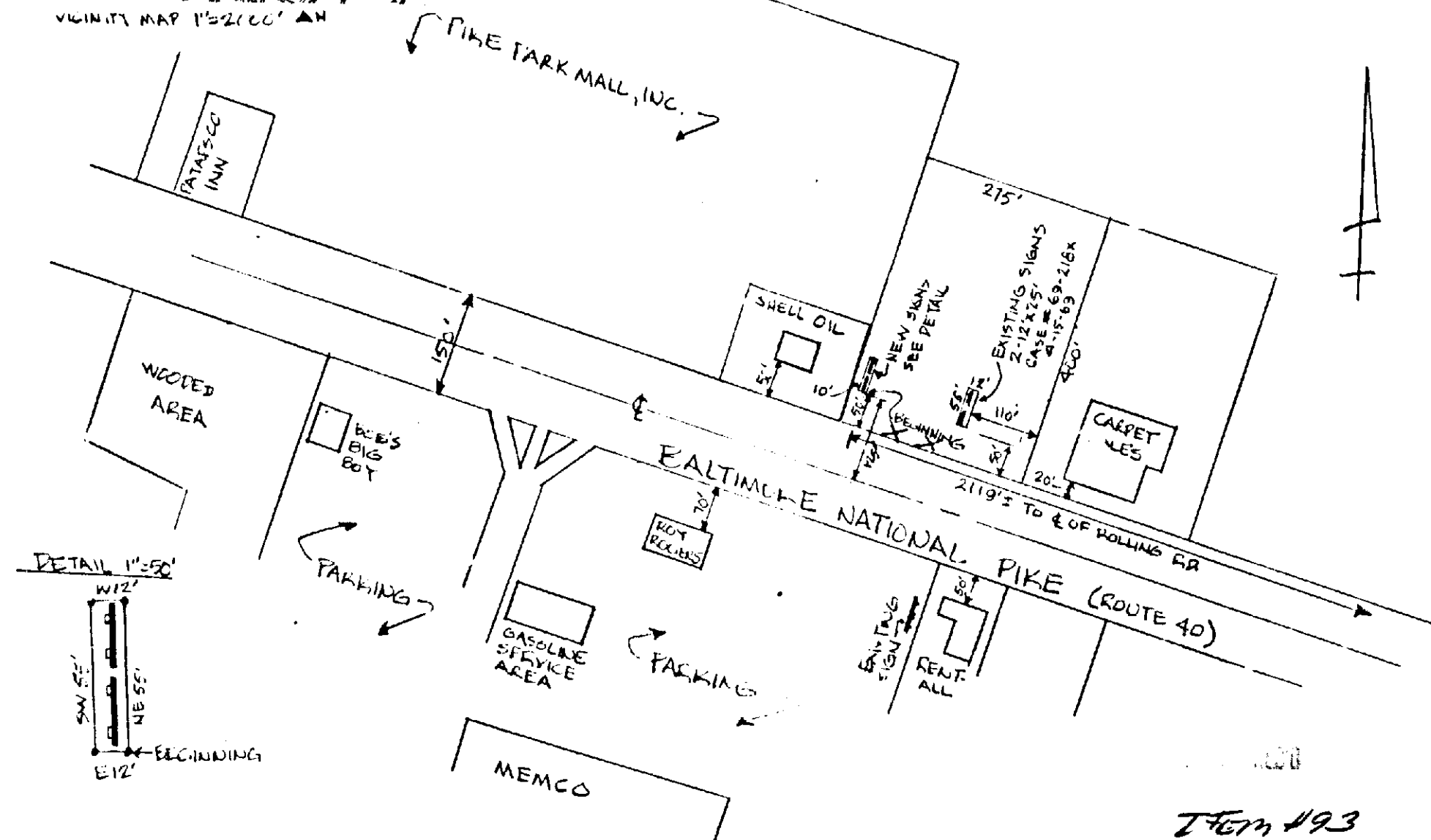


ITEM #93
Petition 4

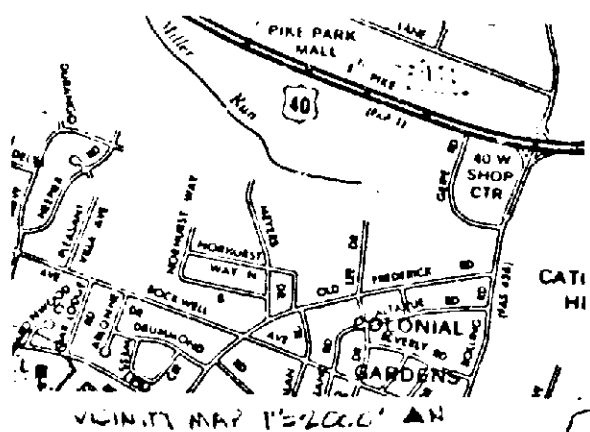


PETITIONER'S SPECIAL EXCEPTION EXHIBIT

PROPOSED - 2 ILLUMINATED ADV. STRUCTURES
(12'x25')
ZONED - B.R.
SCALE - 1"=200'
NOTE - ALL SIGN TO BE ERECTED IN
ACCORDANCE WITH SECTION 413
OF BALTO CO. ZONING REGULATIONS.

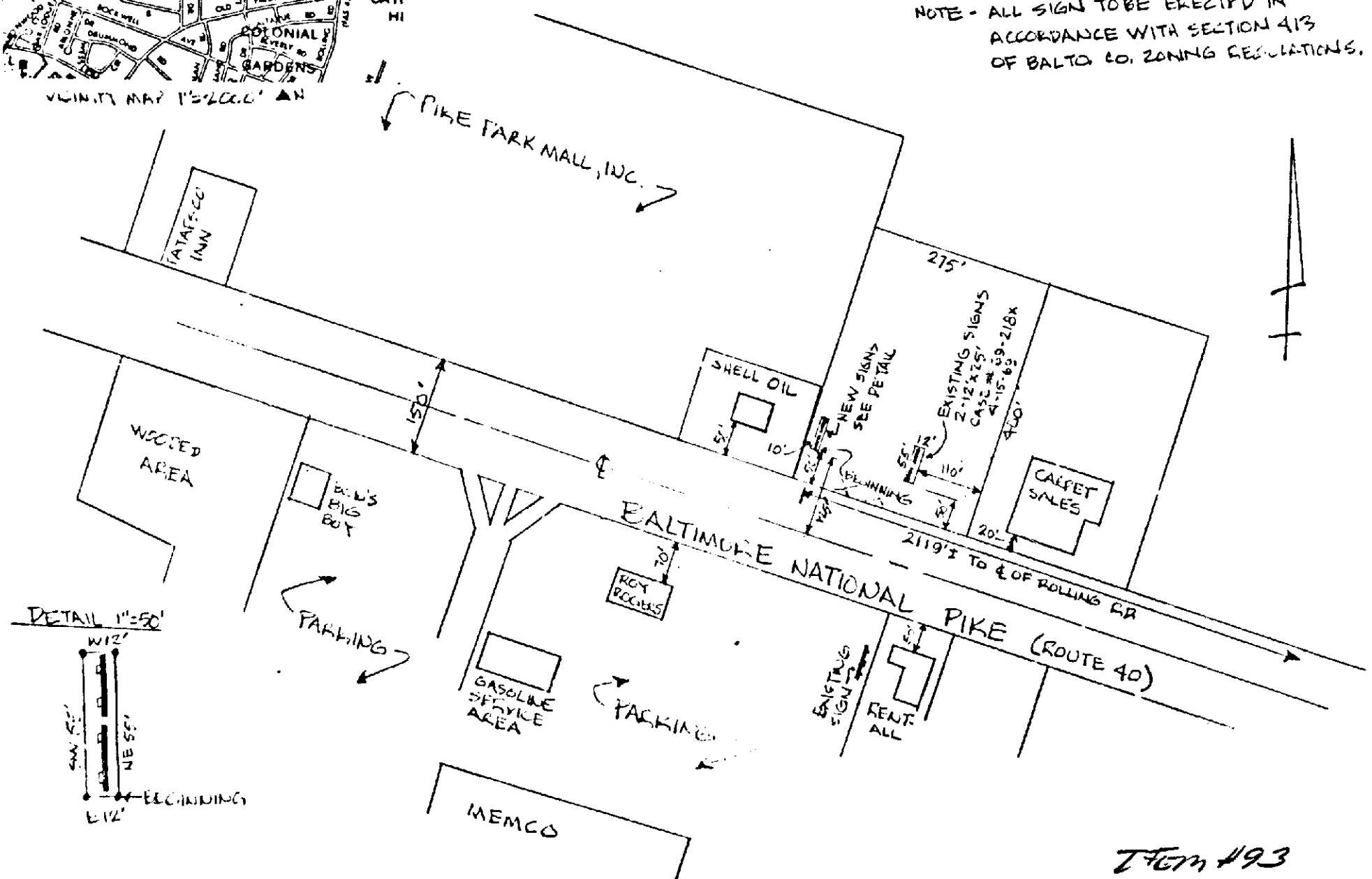


ITEM #93
Petition 4



PETITIONER'S SPECIAL EXCEPTION EXHIBIT

PROPOSED - 2 ILLUMINATED ADV. STRUCTURES
(12'x25')
ZONED - B.R.
SCALE - 1"=200'
NOTE - ALL SIGN TO BE ERECTED IN
ACCORDANCE WITH SECTION 413
OF BALTO CO. ZONING REGULATIONS.



ITEM #93
Petition 4

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 113047

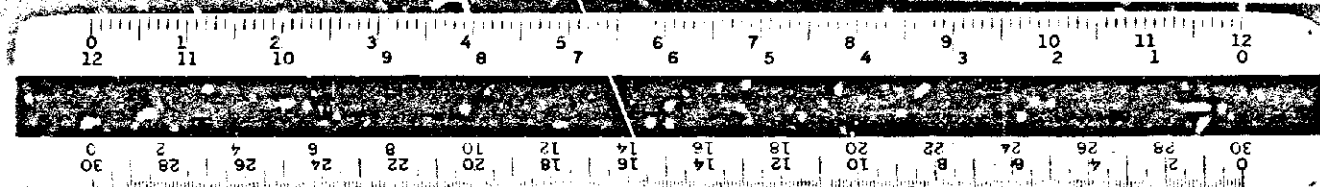
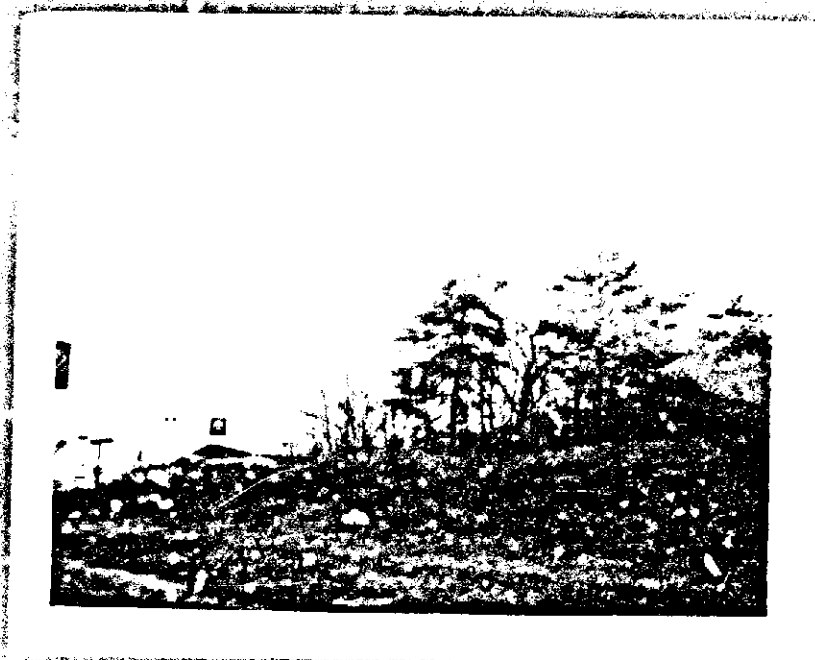
DATE 12/30/82 ACCOUNT R-01-615-000

AMOUNT \$80.00

RECEIVED FROM: Marlon Albert Figinski
FOR: Appeal of Case #82-276-XSFH
(Anna E. E. Schneider)

C 884*****80000 8072A

VALIDATION OR SIGNATURE OF CASHIER



Pursuant to the advertisement, posting of property, and public hearing on the Petition and it appearing that by reason of the requirements of Section 502.1 of the Baltimore County Zoning Regulations

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this day of _____, 19____, that the herein Petition for Special Exception

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Nick Commodari Date: December 3, 1981
FROM: Charles E. Burnham
SUBJECT: Zoning Advisory Committee Meeting of November 17, 1981

ITEM NO. 86 See Comments
ITEM NO. 87 Standard Comments
ITEM NO. 88 See Comments
ITEM NO. 89 See Comments
ITEM NO. 90 See Comments
ITEM NO. 91 See Comments
ITEM NO. 92 Standard Comments
ITEM NO. 93 Standard Comments

Charles E. Burnham
Charles E. Burnham
Plans Review Chief

CEB:rrj

Pursuant to the advertisement, posting of property, and public hearing on the Petition and it appearing that by reason of the requirements of Section 502.1 of the Baltimore County Zoning Regulations

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this day of _____, 19____, that the herein Petition for Special Exception

BALTIMORE COUNTY PUBLIC SCHOOLS

Robert Y. Dabel, Superintendent
Towson, Maryland - 21204

Date: November 17, 1981

Mr. William E. Hammond
Zoning Commissioner
Baltimore County Office Building
1111 West Chesapeake Avenue
Towson, Maryland 21204

Z.A.C. Meeting of: November 17, 1981

RE: Item No: 86, 87, 88, 89, 90, 91, 92, 93
Property Owner:
Location:
Present Zoning:
Proposed Zoning:

District:
No. Acres:

Dear Mr. Hammond:

All of the above have no bearing on student population.

Very truly yours,
Wm. Nick Petrovich, Assistant
Department of Planning

WNP/bp

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

William E. Hammond, Zoning Commissioner
TO: Office of Planning and Zoning Date: November 24, 1981
FROM: Ian J. Forrest
SUBJECT: Zoning Variance - Jones

The Baltimore County Department of Health has reviewed the following zoning variance items, and has no specific comments regarding same:

- Item #80 - Edwin J. & Catherine McClaaskey
- Item #83 - John Frank, Sr.
- Item #84 - White Marsh Mall, Inc.
- Item #85 - Harry Giardina
- Item #87 - Harold P. & Elaine L. Rothman
- Item #89 - Donald Ray & Dolores F. McCoy
- Item #90 - Betty Lee Dulany, et al
- Item #91 - Marine Oaks
- Item #92 - John W. Huber
- Item #93 - Anna E. E. Schneider
- Item #94 - Cassius D. & Shirley V. Miller
- Item #95 - American Telephone & Telegraph Co.
- Item #96 - American Telephone & Telegraph Co.
- Item #97 - American Telephone & Telegraph Co.
- Item #98 - Wil. Thomas & Dorothy Lee Palmisano
- Item #99 - Salvatore Spitaleri
- Item #100 - Clarence & Karen Miller

Ian J. Forrest, Director
BUREAU OF ENVIRONMENTAL SERVICES

IJF/eth

METROMEDIA, INC.
Plaintiff
V
BALTIMORE COUNTY, MARYLAND
et al
Defendants

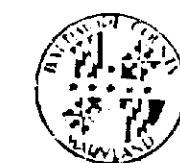
IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
EQUITY NO. 103167

MEMORANDUM OPINION

In 1955 the County published a mimeographed version of Section 413 of the Baltimore County Zoning Regulations which purported to be in conformity with certain regulations adopted by the County Commissioners of Baltimore County on March 30, 1955. In 1957, and in 1963, the County republished this same version in the "Black" and "Blue" books respectively. For the next fourteen years the County treated these three published versions of Section 413 as the established rule, by adhering to the regulation, insisting that others follow its dictates, and representing to the Courts that this version of Section 413 was the law to be applied to all cases coming within its ambit.

In 1969, without notice or hearing, the County published yet another looseleaf volume of zoning regulations, the Red Book, which substantially altered Section 413 as it appeared in the previously promulgated versions. In 1975, the County published a gold looseleaf edition of the regulations (the Gold book). In this edition, Section 413 followed the Red book but was inconsistent with the Black and Blue books. The County explains the inconsistency as follows: While searching County archives, some county employee found, secreted away in a vault, the original version (the "Soft Book") of the 1955 zoning regulations which differed substantially from the three versions which the County had disseminated. Thereupon the County promulgated a new version of Section 413 in the Red and Gold Books without notice or

PETITIONER'S
EXHIBIT 2



BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204
825-7010

PAUL H. REINCKE
CHIEF

December 16, 1981

Mr. William Hammond
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

Attention: Nick Commodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: Anna E. E. Schneider

Location: 125' N/W of centerline of Baltimore National Pike 2020' W. of Rolling Road
Item No.: 93 Zoning Agenda: Meeting of November 17, 1981

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

() 1. Fire hydrants for the referenced property are required and shall be located at intervals of _____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

() 2. A second means of vehicle access is required for the site.

() 3. The vehicle dead end condition shown at _____

EXCEEDS the maximum allowed by the Fire Department.

() 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

() 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 Edition prior to occupancy.

() 6. Site plans are approved, as drawn.

(X) 7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: _____ Noted and Approved: _____
Planning Group _____ Fire Prevention Bureau
Special Inspection Division

JH/mb /cm

hearing, picking up the original Soft Book text that differed significantly from the mimeographed and the Black and Blue versions.

The Plaintiff cried foul: The County is changing the rules in the middle of the game. The Plaintiff contends that the County, by repeated publication, abandoned any adherence to the Soft Book and that its long adherence to and dissemination of the old Section 413 constituted a de facto ratification of the mimeographed version of the 1955 zoning regulations. In support of this contention the Plaintiff cites Pease v Peck, 18 How. (59 US), 595 (1855) which holds that the government's long acquiescence to a law which it has promulgated constitutes a ratification of that law, even though the promulgated version differs from the original text.

The consistent versions of Section 413 in the early mimeographed publication and in the Black Book and the Blue Book became effective and controlling law by publication, dissemination, ratification and long acquiescence. This version of the law was not validly changed by either the Red or the Gold Book since the promulgation of these sets of regulations was not done after the notice and hearing required by Section 22 of the County Code.

This Court will declare that the Defendant must accept application for special exceptions submitted by the Plaintiff and, after hearing, determine the merits of the application based upon Section 413 as contained in the mimeographed publication of 1957 and 1963. This ruling is applicable only to Section 413 and to no other regulation.

John E. Raine, Jr.
JOHN E. RAINE, JR.
CHIEF JUDGE

JULY 1, 1981

ORDER RECEIVED FOR FILING

DATE December 2, 1982

BY *John P. Layzell*

RE: PETITIONS FOR SPECIAL EX-
CEPTION AND SPECIAL HEARING
N/S of Baltimore National Pike,
2,119' W of Rolling Rd.
1st Election District
Anna E.E. Schneider - Petitioner
NO. 82-226-XSPH (Item No. 93)

BEFORE THE
DEPUTY ZONING
COMMISSIONER
OF
BALTIMORE COUNTY

This matter comes before the Deputy Zoning Commissioner as a result of a Petition for Special Exception for two 12' x 25' illuminated outdoor advertising structures and, additionally, a Petition for Special Hearing to determine whether the required spacing between outdoor advertising signs on vacant commercial property contiguous to improved commercial property is 100 or 500 feet.

According to the property description, site plan, and testimony, the subject site is zoned B.R., has a 275-foot frontage on Baltimore National Pike, is 400 feet deep, and is improved only with the existing double-faced sign allowed by Case No. 69-218-X. Lots on both sides of the property are improved and currently occupied by Shell Oil Company and Carpet Sales. The double-faced illuminated advertising structure is proposed to be erected 50 feet from the property line, 125 feet from the center line of Baltimore National Pike, and 155 feet away from the existing sign. The subject property and the adjacent properties, which front Baltimore National Pike, are all zoned B.R.

A review of both the Baltimore County Zoning Regulations regarding signs and Metromedia, Inc. v. Baltimore County, Maryland, et al, In Equity, Docket 142, Folio 255, Case No. 103167 (Raine, Chief Judge), discloses that the requirements of Section 413.3.b, d, e, have been met. The site plan and testimony reveal that the requirements of Section 413.3.a, c, h, and i, have been met or are not applicable.

Section 413.3.f. requires that "... all outdoor advertising signs on vacant land shall be located not less than 500 feet

IN THE MATTER OF THE APPLICATION OF
ANNA E. E. SCHNEIDER
FOR SPECIAL EXCEPTION
for two outdoor advertising
illuminated sign structures, and
SPECIAL HEARING under
Section 500.7 of the Baltimore
County Zoning Regulations
(spacing between signs)
N/S Baltimore National Pike 2119'
W. of Rolling Road
1st District

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 82-226-XSPH

OPINION

The above captioned matter comes before the Board for hearing on an appeal from a decision of the Deputy Zoning Commissioner dated December 2, 1982. At issue is the interpretation of Section 413.3.f of the Baltimore County Zoning Regulations. The Deputy Zoning Commissioner denied the Appellant's petition for a special exception to permit the erection of two 12 feet by 25 feet illuminated outdoor advertising structures, and a special hearing to determine whether the required spacing between outdoor advertising signs on vacant commercial property is 100 feet or 500 feet. The subject property is zoned B.R., and is located on the north side of Baltimore National Pike 2,119 feet west of Rolling Road, in the First Election District of Baltimore County.

The Appellant, in both opening and closing argument, as well as the Memorandum submitted, suggests, among other things, that the decision of Judge Raine in Metromedia, Inc. v. Baltimore County, Maryland, Equity Docket 142, Folio 255, Case No. 103167, dated July 1, 1981, is binding on this Board. Appellant also suggests that the Deputy Zoning Commissioner misinterpreted the provisions of Section 413.3.f of the Baltimore County Zoning Regulations. People's Counsel submits, however, that Metromedia is not binding, that the Deputy Zoning Commissioner's interpretation of Section 413.3.f of the Baltimore County Zoning Regulations was correct and that, in any event, the erection of the proposed structures in a B.R. zone is prohibited.

The Appellant's only witness, Wilbur R. Walker, real estate developer, described the subject property as well as the properties contiguous to the subject site as commercial properties. Mr. Walker's testimony with respect to the location of the proposed signs was uncontroverted. The proposed location would be 50 feet from the

ORDER RECEIVED FOR FILING

DATE December 2, 1982

BY *John P. Layzell*

apart ..." and is interpreted by this Commissioner as meaning that if more than one outdoor advertising sign is located on any parcel of vacant land, those signs are to be not less than 500 feet apart within that parcel. This section continues "... all such signs placed on improved commercial properties shall be spaced not less than 100 feet apart. The 100-foot spacing shall govern when improved and unimproved commercial properties are contiguous.", and it is interpreted that the latter sentence is included in the zoning regulations to allow an outdoor advertising sign on vacant land to be located as close as 100 feet to another outdoor advertising sign when the latter sign is located on a contiguous improved commercial property.

Therefore, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 2nd day of December, 1982, that the required spacing between outdoor advertising signs on vacant commercial property contiguous to improved commercial property is 500 feet and, as such, the Petition for Special Exception for two 12' x 25' illuminated outdoor advertising sign structures is hereby DENIED.

John M. Hession, II
Deputy Zoning Commissioner of
Baltimore County

Anna E. E. Schneider - #82-226-XSPH

2.

property line, 150 feet from the center line of the Baltimore National Pike and 155 feet from the presently existing sign on the subject property.

The facts are undisputed. In dispute is the interpretation and application of Section 413.3.f of the Baltimore County Zoning Regulations, and the extent to which this Board is bound by the Metromedia decision.

Because this matter involves a Baltimore County zoning regulation this Board does believe and, therefore, does determine that we are bound by a decision of the Circuit Court for Baltimore County until such time as that decision is overturned by one of the Appellate Courts of this State. However, it is important to note that this Board considers the decision rendered in Metromedia as binding in its application of the law.

This Board does not consider the holding in Metromedia as evidence and does not sustaining People's Counsel's objection to Appellant's efforts to introduce it as such. This Board further notes that although the law enunciated in Metromedia is binding on this Board, we do not believe that a similar decision in another jurisdiction would be binding on this Board unless, of course, that decision was afforded the appropriate appellate review. Obviously, the distinction this Board applies to Metromedia surrounds the fact that the regulations involved are Baltimore County regulations, and the judgment rendered with respect thereto was declaratory in nature.

Having thus expressed our view with respect to Appellant's suggestion that Metromedia is binding on this Board, we now direct our attention to the facts of the case and the interpretation of Section 413.3.f of the Baltimore County Zoning Regulations (the other sections of 413.3 B.C.Z.R. are not in dispute).

Section 413.3.f reads as follows:

"In any B.L. or B.M. zone, all outdoor advertising signs on vacant land shall be located not less than 500 feet apart; all such signs placed on improved commercial properties shall be spaced not less than 100 feet apart. The 100 foot spacing shall govern when improved and unimproved commercial properties are contiguous. . . ."

A careful reading of the regulation persuades this Board that the interpretation given to the regulation by the Deputy Zoning Commissioner was not accurate.

RE: PETITION FOR SPECIAL EXCEPTION
PETITION FOR SPECIAL HEARING
N/S of Baltimore National Pike,
2119' W of Rolling Rd., 1st District

BEFORE THE ZONING COMMISSIONER
OF BALTIMORE COUNTY

ANNA E. E. SCHNEIDER, Petitioner : Case No. 82-226-XSPH

ORDER TO ENTER APPEARANCE

Mr. Commissioner:

Pursuant to the authority contained in Section 524.1 of the Baltimore County Charter, I hereby enter my appearance in this proceeding. You are requested to notify me of any hearing date or dates which may be now or hereafter designated therefor, and of the passage of any preliminary or final Order in connection therewith.

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel

John W. Hession, II
John W. Hession, II
People's Counsel for Baltimore County
Rm. 223, Court House
Towson, Maryland 21204
494-2188

I HEREBY CERTIFY that on this 23rd day of March, 1982, a copy of the foregoing Order was mailed to Ira C. Cooke, Esquire, Melnicove, Kaufman & Weiner, 35 S. Charles Street, Sixth Floor, Baltimore, Maryland 21201, Attorney for Petitioner; and Foster & Kleiser, 3001 Remington Avenue, Baltimore, Maryland 21211, Contract Purchaser.

John W. Hession, III
John W. Hession, III

Anna E. E. Schneider - #82-226-XSPH

3.

Clearly, the subject signs, as proposed, would be more than 100 feet from the existing sign. Additionally, in this Board's opinion, the subject property does qualify as an unimproved commercial property contiguous to an improved commercial property. As such, a reasonable interpretation of Section 413.3.f in its entirety mandates that the subject signs be placed not less than 100 feet apart, not 500 feet apart as determined by the Deputy Zoning Commissioner. Nevertheless, this Board, on the record before it, is constrained to deny the Appellant relief. True, in our opinion, this Board is bound by the Metromedia decision. Having determined that we are so bound, and further, having determined that the Appellant's proposition with respect to the interpretation of Section 413.3.f of the Baltimore County Zoning Regulations constitutes the more reasonable interpretation, we must, however, affirm the decision of the Deputy Zoning Commissioner.

Metromedia clearly indicates that Baltimore County shall be enjoined from refusing acceptance of applications for special exceptions pursuant to Section 413 of the Baltimore County Zoning Regulations. The reasons cited concerned the fact that the regulations, enacted in 1955, mimeographed and subsequently placed in the "Black Book" and the "Blue Book" were controlling by publication, dissemination, ratification and long acquiescence. Judge Raine stated: "This version of the law was not validly changed by either the Red or Gold Book since the promulgation of these sets of regulations was not done after the notice and hearing required by Section 22 of the County Code."

However, the Red Book was published in 1969, and the Gold Book was published in 1975. Metromedia was decided on July 1, 1981. The case at bar was decided by the Deputy Zoning Commissioner on December 2, 1982. This Board determines, as a fact, that the zoning regulations applicable to the case at bar are the Baltimore County Zoning Regulations certified pursuant to Section 22-34 of the County Code in November, 1981. No evidence has been produced to persuade this Board that the notice and hearing requirements mandated by Section 22 of the County Code were not met prior to the November, 1981, certification.

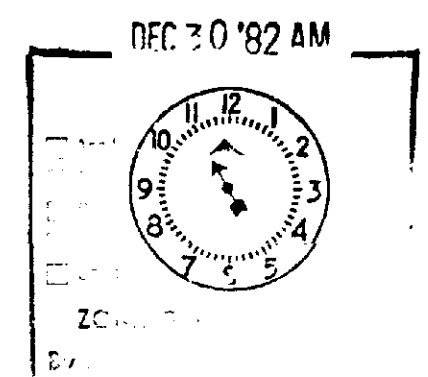
RE: PETITIONS FOR SPECIAL
EXCEPTION AND SPECIAL HEARING
N/S of Baltimore National
Pike, 2,119' W of Rolling Rd.
1st Election District
Anna E.E. Schneider -
Petitioner
NO. 82-226-XSPH (Item No. 93)

BEFORE THE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY

NOTICE OF APPEAL

On behalf of Petitioners (Anna E. E. Schneider, c/o Karl Schneider, 1765 West Friendship, Sykesville, Maryland 21784; and contract lessee, Foster & Kleiser, Division of Metromedia, 3001 Remington Avenue, Baltimore, Maryland 21211) an appeal is noted from the decision in this case by Order of the Deputy Zoning Commissioner of Baltimore County on December 2, 1982.

M. Albert Fignert
M. ALBERT FIGNERT
36 South Charles Street
Sixth Floor
Baltimore, Maryland 21201
(301) 332-8520
Attorney for Petitioners



Anna E. E. Schneider - #82-226-XSPH

4.

Since the language of Section 414.3 of the Baltimore County Zoning Regulations is clear and unambiguous this Board is persuaded that outdoor advertising signs, except those for which the regulations specifically allow, are prohibited as a special exception in a B.R. zone. Obviously, such are permitted as special exceptions in B.L., B.M., M.L. and M.H. zones.

Although this Board suggests that the facts incident to the case at bar are conducive to the location of the proposed structure, it would appear, in this Board's opinion, that the vehicle through which the Appellant should pursue relief is legislative. The Board cannot disregard the will and the wisdom of the legislative body in deleting the B.R. zone from those zones in which outdoor advertising can be located. Again, inasmuch as the applicable law was certified in November of 1981, this Board cannot extend the reasoning of Metromedia to the subject matter. To do so, in our opinion, extends the logic of Metromedia beyond the scope Judge Raine intended.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 1st day of July, 1983, by the County Board of Appeals, ORDERED that the Order of the Deputy Zoning Commissioner, dated December 2, 1982, be AFFIRMED, and that the special exception petitioned for and the relief sought in the special hearing petitioned for, be and the same are hereby DENIED.

Any appeal from this decision must be in accordance with Rules 8-1 thru 8-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
William R. Evans
William R. Evans, Acting Chairman
Larry B. Spurrier
Larry B. Spurrier
Patricia Phipps
Patricia Phipps

MEMORANDUM, INC. Plaintiff
BALTIMORE COUNTY, MARYLAND et al Defendants
CIRCUIT COURT FOR BALTIMORE COUNTY
EQUITY NO. 103167

MEMORANDUM OPINION

In 1955 the County published a mimeographed version of Section 413 of the Baltimore County Zoning Regulations which purported to be in conformity with certain regulations adopted by the County Commissioners of Baltimore County on March 30, 1955. In 1961, and in 1963, the County republished this same version in the "Black" and "Blue" books respectively. For the next fourteen years the County treated these three published versions of Section 413 as the established rule, by adhering to the regulation, insisting that others follow its dictates, and representing to the Courts that this version of Section 413 was the law to be applied to all cases coming within its ambit.

In 1969, without notice or hearing, the County published yet another looseleaf volume of zoning regulations, the Red Book, which substantially altered Section 413 as it appeared in the previously promulgated versions. In 1975, the County published a gold looseleaf edition of the regulations (the Gold book). In this edition, Section 413 followed the Red book but was inconsistent with the Black and Blue books. The County explains the inconsistency as follows: While searching County archives, some county employee found, secreted away in a vault, the original version (the "Soft Book") of the 1955 zoning regulations which differed substantially from the three versions which the County had disseminated. Thereupon the County promulgated a new version of Section 413 in the Red and Gold Books without notice or

EXHIBIT 5

MELNICOVE, KAUFMAN & WEINER, P.A.

William E. Hammond, Esquire
January 30, 1982
Page Two

The 100 foot spacing shall govern when improved and unimproved commercial properties are contiguous. Two signs placed approximately at right angles to the street right-of-way...are permitted. Provisions as to spacing and location of signs shall apply separately to each side of a street." [Emphasis supplied.]

The reasoning stated by Mr. Commodari rests solely on the first part of the first sentence of the section. It, unfortunately, ignores the provision as a whole and, particularly, the second sentence, underlined in the foregoing quotation. The petition addresses a situation where there are contiguous improved and unimproved commercial properties. Sign site 1 is 110' west of the line binding, on the east, between improved and unimproved commercial properties; sign site 2 is 10' east of the line binding, on the west, between improved and unimproved commercial properties. What can the above underlined sentence mean unless it means that in a situation such as that posited by the above-referenced petition the one hundred foot gauge should be followed? There is no other proper construction of the section. Indeed, if Mr. Commodari's expression of January 7 is followed, the second sentence of the foregoing section would be administratively excised from the zoning code.

It should be noted that on at least two prior occasions the interpretation sought by my clients has been accepted by the County's zoning process. At any hearing, reference to the prior approvals will be presented.

On behalf of my clients, I respectfully ask for the relief requested at the close of the first sentence hereof.

Very truly yours,

M. Albert Figinski

M. ALBERT FIGINSKI

MAP:dja
cc: Mr. W. R. Walker
Poster and Kleiser

hearing, picking up the original Soft Book text that differed significantly from the mimeographed and the Black and Blue versions.

The Plaintiff avers that: The County is changing the rules in the middle of the game. The Plaintiff contends that the County, by repeated publication, abandoned any adherence to the Soft Book and that its long adherence to and dissemination of the old Section 413 constituted a de facto ratification of the mimeographed version of the 1955 zoning regulations. In support of this contention the Plaintiff cites Pease v Peck, 18 How. (59 US), 595 (1855) which holds that the government's long acquiescence to a law which it has promulgated constitute a ratification of that law, even though the promulgated version differs from the original text.

The consistent versions of Section 413 in the early mimeographed publication and in the Black Book and the Blue Book became effective and controlling law by publication, dissemination, ratification and long acquiescence. This version of the law was not validly changed by either the Red or the Gold Book since the promulgation of these sets of regulations was not done after the notice and hearing required by Section 22 of the County Code.

This Court will declare that the Defendant must accept application for special exceptions submitted by the Plaintiff and, after hearing, determine the merits of the application based upon Section 413 as contained in the mimeographed publication of 1957 and 1963. This ruling is applicable only to Section 413 and to no other regulation.

JOHN E. RAINE, JR.
CHIEF JUDGE

JULY 1, 1981

-2-

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

January 7, 1982

Mr. Wilbur R. Walker
Poster & Kleiser
3001 Remington Avenue
Baltimore, Maryland 21211

Dear Mr. Walker:

As explained in our previous conversations, I am unable to continue processing the above-referenced petition until a variance request is included. This is based on the fact that the proposed sign is located closer than 500 feet to the existing sign on this vacant property.

If you have any further questions please do not hesitate to contact this office at 494-3391.

Very truly yours,

NICHOLAS F. COMMODARI
Chairman
Zoning Plans Advisory Committee

NEC:bco

EXHIBIT 1

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

January 7, 1982

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204

Nicholas F. Commodari
Chairman

MEMBERS
Bureau of Engineering
Department of Traffic Engineering
State Roads Commission
Bureau of Fire Prevention
Health Department
Project Planning
Building Department
Board of Education
Zoning Administration
Industrial Development

Mr. Wilbur R. Walker
Poster & Kleiser
3001 Remington Avenue
Baltimore, Maryland 21211

RE: Item No. 93
Petitioner - Anna Schneider
Special Exception Petition

Dear Mr. Walker:

As explained in our previous conversations, I am unable to continue processing the above-referenced petition until a variance request is included. This is based on the fact that the proposed sign is located closer than 500 feet to the existing sign on this vacant property.

If you have any further questions please do not hesitate to contact this office at 494-3391.

Very truly yours,

NICHOLAS F. COMMODARI
Chairman
Zoning Plans Advisory Committee

NEC:bco

Black Book - 1957

SIGNS

- The total surface area of any such sign, exclusive of structural supports, and trim shall not exceed 300 square feet, except that a hand-painted custom-built sign may have a total surface area of not exceeding 500 square feet. The provisions of this sub-paragraph referring to hand-painted custom-built signs shall permit only one single face unit.
- No such sign shall be permitted to front on, face or be located within 250 feet of the right-of-way of any expressway or other controlled-access-type highway.
- No such sign shall be located closer to the street right-of-way line than the minimum front yard requirement for a commercial building as determined by these Regulations for the zone involved.
- No such sign shall be located on unimproved land within 100 feet of any street intersection involving a dual highway, or within 50 feet of any other intersection.
- No outdoor advertising sign shall be erected in any B. L., B. M., or B. R. Zones if at least 50% of the available frontage between streets, on that side of the street on which the sign is proposed to be located, is improved with dwelling uses.
- In any B. L., B. M., B. R. Zones, all outdoor advertising signs on vacant land shall be located not less than 500 feet apart; all such signs placed on improved commercial properties shall be spaced not less than 100 feet apart. The 100 foot spacing shall govern when improved and unimproved commercial properties are contiguous. Two signs placed approximately at right angles to a street right-of-way, either back to back or end to end, are permitted. Provisions as to spacing and location of signs shall apply separately to each side of a street.
- In any M. L. or M. H. Zone, signs shall be placed at least 1,000 feet apart on the

413.3

Pet 413.3

MELNICOVE, KAUFMAN, WEINER & SMOUSE, P.A.

36 SOUTH CHARLES STREET
SIXTH FLOOR
BALTIMORE, MARYLAND 21201-3060
(301) 332-8500
(WRITER'S DIRECT DIAL NO.)

JOSEPH S. KAUFMAN
ARNOLD S. WEINER
ROBERT E. CAHILL
FRANK J. GOLDSTEIN
H. RUSSELL SMOUSE
LOUIS B. PRICE
ISAAC M. NEUBERGER
DAVID L. SNYDER
GARY I. STRAUSSBERG
GARY I. STRAUSSBERG
GERARD P. MARTIN

January 30, 1982

William E. Hammond, Esquire
Chief Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: Item No. 93
Petitioner - Anna Schneider
Special Exception Petition

Dear Commissioner Hammond:

By letter dated January 7, 1982, copy enclosed, as Exhibit 1, Nicholas B. Commodari, Chairman, Zoning Plans Advisory Committee, Baltimore County notified my client, Foster & Kleiser, the interested party in regard to the above-referenced petition, that processing would cease because the property billboard "is located closer than 500 feet to the existing sign on this vacant property." Respectfully, on behalf of my client, I contend that Mr. Commodari improperly terminated the processing because Section 413.3 of the County's Zoning Ordinance, properly construed, allows an outdoor advertising sign, i.e., a billboard, as a Special Exception in the instance posited by the above-referenced application. Respectfully, I would request that either (a) the processing be continued and a regular hearing held before you or (b) a special hearing before you be scheduled to resolve the legal issue at the heart of this matter.

Section 413.3 f provides in pertinent part:

"In [certain zones including the zones in which this sign is proposed], all outdoor advertising signs on vacant land shall be located not less than 500 feet apart; all such signs placed on improved commercial properties shall be located not less than 100 feet apart."

PETITIONER'S
EXHIBIT 1

MELNICOVE, KAUFMAN, WEINER & SMOUSE, P.A.

36 SOUTH CHARLES STREET
SIXTH FLOOR
BALTIMORE, MARYLAND 21201-3060
(301) 332-8500
(WRITER'S DIRECT DIAL NO.)

June 23, 1982

Mrs. Jean Jung
Deputy Zoning Commissioner
Zoning Office of Baltimore County
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: Special Hearing No. 82-226X SPH

Dear Mrs. Jung:

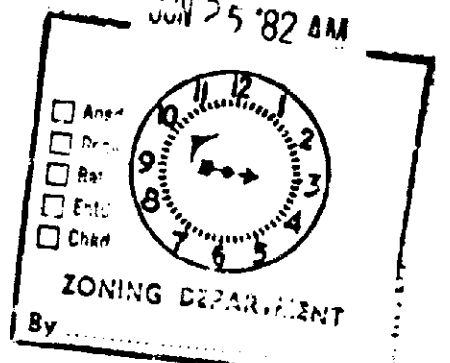
Two months ago you heard the above-referenced matter. On April 30, as promised during the hearing, I supplemented the record with data obtained through my client.

Several times since then, my client has asked me about the status of the Zoning Commissioner's decision. Given the time that has passed and the expressions of my client, I simply must ask when a decision can be anticipated.

Very truly yours,

M. ALBERT FIGINSKI

MAP/1sh



32-3187
4/6

LAW OFFICES OF
MELNICOVE, KAUFMAN, WEINER & SMOUSE, P.A.

36 SOUTH CHARLES STREET
SIXTH FLOOR
BALTIMORE, MARYLAND 21201-3060
(301) 332-6500
(WRITERS DIRECT DIAL NO.)
332-8520

October 8, 1982

Mrs. Jean Jung
Deputy Zoning Commissioner
Zoning Office of Baltimore County
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Special Hearing No. 82-226X SPH

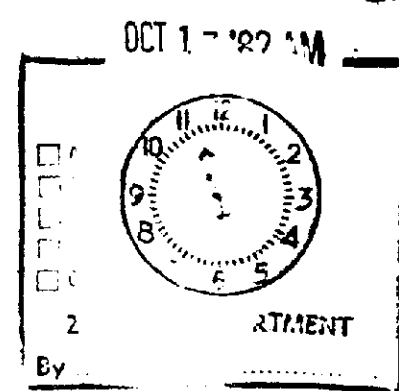
Dear Mrs. Jung:

At my client's request, please let me know when we may expect a decision in the above-referenced matter which was heard by you on April 22, 1982.

Very truly yours,

M. Albert Figgins
M. ALBERT FIGINSKI

MAF:dja



BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

William E. Hammond
Zoning Commissioner
TO: Norman E. Gerber, Director
Office of Planning and Zoning
FROM: Zoning Petition No. 82-226-XSph
SUBJECT:

Date: March 31, 1982

In view of the matter under consideration for special hearing,
this office offers no comment.

Norman E. Gerber
Norman E. Gerber
Director of Planning and Zoning

NEG:JGH:rmc

DESCRIPTION OF PROPERTY

Beginning at a point located 125 feet measured in a northeasterly direction at right angles from a point in the center line of Baltimore National Pike 2119 feet westerly from the center line of intersection of Rolling Road and Baltimore National Pike (Rt 4C), thence running in a northeasterly direction 55 feet to a point, thence westerly 12 feet to a point, thence running southwesterly 55 feet to a point, thence running in a easterly direction 12 feet to the point of beginning.

PETITION FOR SPECIAL EXCEPTION SPECIAL HEARING
1st DISTRICT

ZONING: Petitions for Special Exception & Special Hearing
LOCATION: North side of Baltimore National Pike, 2119 ft. West of Rolling Road
DATE & TIME: Thursday, April 22, 1982 at 9:30 A. M.
PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Ave., Towson, Maryland

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing:

Petition for Special Exception for two (2) 12' x 25' outdoor advertising illuminated sign structures, and Petition for Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve a determination of whether the required spacing between outdoor advertising signs on vacant commercial property which is contiguous to improved commercial property is 100' or 500' (Section 413.3f of zoning regulations)

All that parcel of land in the First District of Baltimore County

Being the property of Anna E. E. Schneider as shown on plat plan filed with the Zoning Department

Hearing Date: Thursday, April 22, 1982 at 9:30 A. M.
Public Hearing: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

BY ORDER OF
WILLIAM E. HAMMOND
ZONING COMMISSIONER
OF BALTIMORE COUNTY

Ira C. Cooke, Esquire
Melnicove, Kaufman, & Weiner
36 South Charles Street - 6th Floor
Baltimore, Maryland 21201

March 18, 1982

NOTICE OF HEARING

RE: Petition for Special Exception & Special Hearing
N/S Baltimore National Pike, 2119' W of Rolling Rd.
Anna E. E. Schneider - Petitioner
Case #82-226-XSPH

TIME: 9:30 A. M.

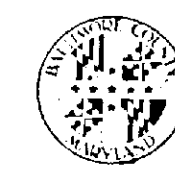
DATE: Thursday, April 22, 1982

PLACE: ROOM 106 COUNTY OFFICE BUILDING, 111 W. CHESAPEAKE AVENUE,

TOWSON, MARYLAND

cc: Foster & Kleiser
3001 Remington Avenue
Baltimore, MD 21211

William E. Hammond
ZONING COMMISSIONER OF
BALTIMORE COUNTY



BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3053

WILLIAM E. HAMMOND
ZONING COMMISSIONER

April 14, 1982

Foster & Kleiser
3001 Remington Avenue
Baltimore, Maryland 21211

RE: Petition for Special Exception and
Special Hearing
N/S Baltimore National Pike, 2119' W of
Rolling Rd.
Anna E. E. Schneider - Petitioner
NO. 82-226-XSPH (Item No. 93)

Dear Sir:

This is to advise you that \$59.70 is due for advertising and posting of the above property.

Please make check payable to Baltimore County, Maryland, and remit to The Zoning Office, Room 113, County Office Building, Towson, Maryland 21204 before the hearing.

Very truly yours,

William E. Hammond
WILLIAM E. HAMMOND
Commissioner

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 107613

DATE: 4/22/82 ACCOUNT: 01-662

AMOUNT: \$59.70

RECEIVED FROM: Foster & Kleiser by Bill Walker

FOR: Advertising & Posting Case No. 82-226-XSPH

307 644 24 39.7044

VALIDATION OR SIGNATURE OF CASHIER



baltimore county
department of traffic engineering
TOWSON, MARYLAND 21204
(301) 494-3550

STEPHENE COLLINS
DIRECTOR

January 20, 1982

Mr. William Hammond
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: ZAC Meeting - November 17, 1981

Dear Mr. Hammond:

The Department of Traffic Engineering has no comment for items number 87, 88, 89, 90, 91 92 and 93.

Michael S. Flahigan
Michael S. Flahigan
Traffic Engineering Associate II

MSF:r1j

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY, IN EQUITY

Plaintiff

VS.

Defendant

CERTIFICATE OF PUBLICATION OF

PETITION FOR SPECIAL EXCEPTION & SPECIAL HEARING
1st DISTRICT
ZONING Petition for Special L-1
LOCAL Use - North side of Baltimore National Pike, 2119' West of Rolling Road
DATE: Filed Thursday April 22, 1982 at 9:30 A. M.
PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Ave., Towson, Maryland
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:
Petition for Special Exception for two (2) 12' x 25' outdoor advertising illuminated structures, and Petition for Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve a determination of whether the required spacing between outdoor advertising signs on vacant commercial property which is contiguous to improved commercial property is 100' or 500' (Section 413.3f of zoning regulations)
All that parcel of land in the First District of Baltimore County
Beginning at a point located 125 feet measured in a northeasterly direction at right angles from a point in the center line of Baltimore National Pike 2119 feet westerly from the center line of intersection of Rolling Road and Baltimore National Pike (Rt. 4C), thence running in a northeasterly direction 55 feet to a point, thence westerly 12 feet to a point, thence running southwesterly 55 feet to a point, thence running in a easterly direction 12 feet to the point of beginning.

Being the property of Anna E. E. Schneider as shown on plat plan filed with the Zoning Department
Hearing Date: Thursday, April 22, 1982 at 9:30 A. M.
Public Hearing: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21201

Office of
ATUXENT
Publishing Corp.
750 Little Patuxent Pkwy.
Columbia, MD 21044

APRIL 1, 1982

THIS IS TO CERTIFY, that the annexed advertisement of

PETITION
NORTHSIDE OF BALT NAT'L PIKE

was inserted in the following:

☒Catorville Times
☐Arbutus Times

weekly newspapers published in Baltimore County, Maryland once a week for ONE successive weeks before the 3 day of APRIL 19 82, that is to say, the same was inserted in the issues of

APRIL 1, 1982

PATUXENT PUBLISHING CORP.
By *William E. Hammond*

WILLIAM E. HAMMOND
ZONING COMMISSIONER

January 7, 1983

John W. Hessian, III, Esquire
People's Counsel
Room 223 Courthouse
Towson, Maryland 21204

Re: Petition for Special Exception
and Special Hearing
N/S of Baltimore National Pike,
2,119' W of Rolling Rd.
Anna E. E. Schneider - Petitioner
Case No. 82-226-XSPH

Dear Mr. Hessian:

Please be advised that an Appeal has been filed by M. Albert Figinski, Esquire, on behalf of the Petitioner, from the decision rendered by the Deputy Zoning Commissioner of Baltimore County in the above referenced matter.

You will be notified of the date and time of the appeal hearing when it is scheduled by the County Board of Appeals.

Very truly yours,

William E. Hammond
William E. Hammond
Zoning Commissioner

WEH:aj

WILLIAM E. HAMMOND
ZONING COMMISSIONER

December 2, 1982

Ira C. Cooke, Esquire
36 South Charles Street
Sixth Floor
Baltimore, Maryland 21201

RE: Petitions for Special Exception
and Special Hearing
N/S of Baltimore National Pike,
2,119' W of Rolling Rd. - 1st
Election District
Anna E. E. Schneider - Petitioner
NO. 82-226-XSPH (Item No. 93)

Dear Mr. Cooke:

I have this date passed my Order in the above captioned matter in accordance with the attached.

Very truly yours,

Jean M.H. Jung
JEAN M.H. JUNG
Deputy Zoning Commissioner

JMHJ/mc

Attachments

cc: M. Albert Figinski, Esquire
36 South Charles Street
Sixth Floor
Baltimore, Maryland 21201

John W. Hessian, III, Esquire
People's Counsel

LAW OFFICES OF
MELNICOVE, KAUFMAN, WEINER & SMOUSE, P.A.

BERNARD S. MELNICOVE
(1911-1971)

JOSEPH S. KAUFMAN
ARNOLD M. WEINER
ROBERT E. CAMILL
FRANKLIN GOLDSTEIN
H. RUSSELL SMOUSE
LOUIS B. PRICE
ISAAC M. NEUBERGER
M. ALBERT FIGINSKI
DAVID L. NYDER
RICHARD V. FALCON
GARY J. STRAUSSBERG
GERARD P. MARTIN
AVRUM M. KOWALSKY
RANSOM J. DAVIS
GLENN E. BUSHEL
IRA C. COOKE

36 SOUTH CHARLES STREET
SIXTH FLOOR
BALTIMORE, MARYLAND 21201-3060

(301) 332-8500
WRITER'S DIRECT DIAL NO.
332-8520

April 30, 1982

Mrs. Jean Jung
Deputy Zoning Commissioner
Zoning Office of Baltimore County
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: Special Hearing No. 82-226X SPH

Dear Mrs. Jung:

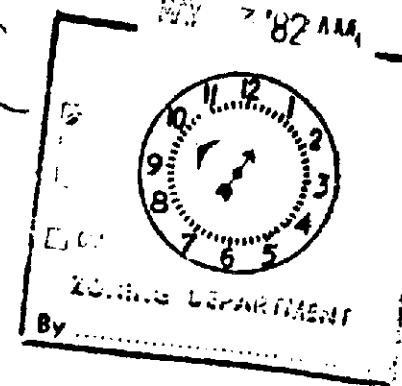
I am enclosing herewith the first page of a letter to me from Mr. Walker which outlines four additional instances where previously zoning officials have followed the interpretation which we sought in the above-referenced special hearing.

The only identifying number which Mr. Walker could find has been set forth as to the first referred to property. None of the others have identifying numbers. I am further advised that as to the last referred location, the signs are no longer in existence. However, the instance still serves as a valid example.

Very truly yours,

M. Albert Figinski
M. ALBERT FIGINSKI

MAF:dja
Enclosure



FOSTER AND KLEISER

A METROMEDIA COMPANY
3000 REMINGTON AVENUE
BALTIMORE, MARYLAND 21211
(301) 233-8820

April 29, 1982

Mr. Albert Figinski, Esq.
36 South Charles Street
Baltimore, Maryland 21201

Dear Albert:

In accord with our discussion today, enclosed are four examples of favorable rulings by Zoning Commissioners of Baltimore County in which they granted Special Exceptions to permit structures to be erected on unimproved properties at a lesser distance than 500 feet separation between structures in B.L., B.M., and B.R. zones, consistent with 413.3f. of the county's published and disseminated regulations.

Property: N/S Wise Ave., 395' E of Gruys Road. 4 signs
Petition for Special Exception - Case Number 68-189 X
Order signed by Edward D. Hardesty, Dept. Zoning Commissioner
2/19/68

(Approved) E/S York Rd. 830' N of Hillside Ave. 2 signs
Petition for Special Exception -
Order signed by John G. Rose, Zoning Commissioner,
10/11/61

(Approved) E/S Reisterstown Rd., 105' S.E. of Westminster Rd. 2 signs
Petition for Special Exception
Order signed by Edward D. Hardesty, Dept. Zoning Commissioner
7/2/68

(Approved) S/S Eastern Blvd., 125' E of Stemmers Run Road - S/S Eastern
Blvd., 175' W of Seversky Court. 3 signs
Petition for Special Exception
Order signed by Wilsie Adams, Zoning Commissioner
2/24/58

LAW OFFICES OF
MELNICOVE, KAUFMAN, WEINER & SMOUSE, P.A.

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GERARD P. MARTIN

36 SOUTH CHARLES STREET
SIXTH FLOOR
BALTIMORE, MARYLAND 21201-3060

(301) 332-8500
WRITER'S DIRECT DIAL NO.
332-8520

February 10, 1982

Mr. Nicholas B. Commodari
Chairman
Zoning Plans Advisory Committee
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: Item No. 93
Petitioner - Anna Schneider
Special Exception Petition

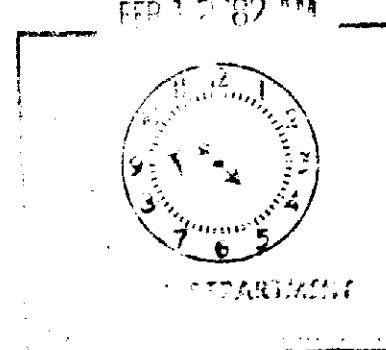
Dear Mr. Commodari:

This letter confirms the message that I left at your office phone today. My client would prefer a special hearing to resolve the legal issue.

Very truly yours,

M. Albert Figinski
M. ALBERT FIGINSKI

MAF:dja



494-3180

County Board of Appeals
Room 219, Court House
Towson, Maryland 21204

July 1, 1983

M. Albert Figinski, Esquire and
Ira C. Cooke, Esquire
36 South Charles Street
6th Floor
Baltimore, Maryland 21201

Re: Case No. 82-226-XSPH
Anna E. E. Schneider

Dear Sirs:

Enclosed herewith is a copy of the Opinion and Order passed today by the County Board of Appeals in the above entitled case.

Very truly yours,

Edith T. Eisenhart
Edith T. Eisenhart, Adm. Secretary

Encl.

cc: Anna E. Schneider
Foster & Kleiser
John W. Hessian, III, Esq.
W. E. Hammond
J. E. Dyer
Jean M. H. Jung
N. E. Gerber
J. G. Howell

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36 SOUTH CHARLES STREET
SIXTH FLOOR
BALTIMORE, MARYLAND 21201-3060

TELEPHONE 301-332-8500
TELECOPIER 301-332-8594
TELEX 710-234-2414
WRITER'S DIRECT DIAL NO.
332-8540

May 31, 1983

Mr. William R. Evans
Acting Chairman, County Board of Appeals
of Baltimore County
Towson, Maryland 21204

RE: Case No. 82-226-XSPH
Anna E. E. Schneider

Dear Mr. Evans:

Pursuant to my communication with you of last week, enclosed please find an original and three (3) copies, one for each member of the Board, of a Memorandum of Points and Authorities in support of Petitioner's Appeal.

Thank you in advance for your kind consideration.

Very truly yours,

Ira C. Cooke
IRA C. COOKE

ICC/bhd

encl.

PETITION OF
ANNA E. E. SCHNEIDER
Special Exception for Two
Outdoor Advertising
Illuminated Sign Structures;
and Special Hearing re
Spacing Between Signs,
North Side of Baltimore
National Pike, 2,119 Feet
West of Rolling Road,
1st District

* BEFORE THE
* COUNTY BOARD OF APPEALS
* FOR BALTIMORE COUNTY
* MR. EVANS, Chairman;
* MS. SUDER AND MR. SPURRIER
* Case No. 82-226-XSPH

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PETITIONER'S APPEAL

INTRODUCTION

Two issues are in dispute between the parties in this case: the validity of Judge Raine's decision in Metromedia, Inc. v. Baltimore County, Maryland, et al, Equity, Docket 142, Folio 255, Case No. 103167; and whether Section 413.3.f. should properly be interpreted as allowing Petitioner to construct an additional outdoor advertising sign on the subject property.

STATEMENT OF FACTS

On March 30, 1955, the County Commissioners of Baltimore County adopted the Zoning Regulations of Baltimore County. Sometime thereafter, in 1955, the County published and